preme Court of the United States unless exceptions be filed [fol. 5] within time limited by law.

April 24, 1936. Opinion filed.

May 8, 1936. Defendant's exceptions to findings, conclusions of law and judgment directed by the court filed.

May 14, 1936. Exceptions of Commonwealth to opinion and judgment filed.

May 19, 1936. Additional exceptions of defendant filed.

JUDGMENT

January 18, 1937. The judgment is directed to be entered in favor of plaintiff and against defendant in the sum of $1375.45. See opinion filed.

JUDGMENT

January 22, 1937. Each of the 41 exceptions are overruled except numbers 21, 22, 23, 29 and 38 which are sustained. The judgment is modified in accordance with and for the reasons given in our opinion upon exceptions filed January 18, 1937. The judgment entered January 18, 1937 is hereby overruled and final judgment is directed to be entered in favor of the Commonwealth and against defendant in the sum of $1441.39. See opinion filed.

January 22, 1937. All the exceptions other than 14 and 15 are overruled as opinion of this date see file.

February 8, 1937. Certiorari sur appeal No. 35 May Term 1937 from Supreme Court filed.

March 4, 1937. Certiorari sur appeal No. 36 May Term 1937 from Supreme Court filed.

[fol. 6] IN COURT OF COMMON PLEAS OF DAUPHIN COUNTY

APPEAL AND SPECIFICATION OF OBJECTIONS

In the Matter of the Account for "Tax on Shares" for the year ending December 31, 1930 amounting to $2,306.08 upon a "Taxable Value of Shares" in the amount of $461,216 at the rate of five mills settled against the Schuylkill Trust Company, Pottsville, Pennsylvania, by the Department of Revenue January 25, 1932 and approved by the Department of the Auditor General January

26, 1932, the Petition for Resettlement of which was refused by the Department of Revenue and the Department of the Auditor General October 21, 1932, which, upon Petition for the review of the said action taken by Department of Revenue and approved by the Department of the Auditor General, was resettled by the Board of Finance and Revenue January 26, 1933, by which resettlement tax was settled against the said Schuylkill Trust Company for the year ending December 31, 1930 in the amount of $2,290.14 upon a "Taxable Value of Shares" in the amount of $458,028, a certification of the action of the said Board of Finance and Revenue and a copy of the said Account showing the amount due as the result of the said action of the Board of Finance and Revenue being hereunto attached.

The Schuylkill Trust Company, Pottsville, Pennsylvania, hereby appeals from the said resettlement of its account by the said Board of Finance and Revenue made January 26, 1933, to the Court of Common Pleas of Dauphin County, and files the following specification of objections thereto, [fol. 7] agreeably to the provisions of the Act of Assembly in such cases made and provided:

I. That the said resettlement of tax as aforesaid is erroneous, illegal and void in the following particulars, to wit:

1. That in the determination of the said taxable value of the shares in the amount of $458,028 the fiscal officers of the Commonwealth considered and included the following United States Securities of the market value of $134,907, Fourth Liberty Loan Bonds 4¼s, of the market value of $103,500, Fourth Liberty 4¼s, of the market value of $2,742, U. S. Treasury 4s of 1954, of the market value of $17,465 and U. S. Treasury 3½s Ser. A., Mar. 1932, of the market value of $11,200. Such consideration and inclusion were erroneous, illegal and void for the reason that thereby such United States securities are subjected to tax by the Commonwealth of Pennsylvania. These securities are exempt from taxation under Clause 2 of Section 8 of Article I of the Constitution of United States and Section 3701 Revised Statutes, 31 U. S. C., Section 742, and their consideration and inclusion in determining the taxable value of the shares of stock of the appellant constitute a violation of Clause 2

of Section 8 of Article I of the Constitution of the United States, said Section 3701 Revised Statutes of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;" and the 14th Amendment [fol. 8] to the Constitution of the United States by depriving the appellant of its property without due process of law and denying to it the equal protection of the laws.

2. That in the determination of the said taxable value of the shares in the amount of $458,028 the fiscal officers of the Commonwealth considered and included the following bonds of the market value of $10,900, Philippine Islands 5½% Public Improvement Loan due Aug. 1, 1941, Act of Philippine Legislature Number 2940, bonds. Such consideration and inclusion were erroneous, illegal and void for the reason that these bonds were issued under the provisions of the Act of Congress of August 29, 1916, Act of Congress July 21, 1921 and Act of the Philippine Legislature Number 2940 approved February 5, 1921 and were exempted from taxation under the provisions of the Act of Congress of February 6, 1905, Chap. 453, Vol. 33, U. S. Statutes at Large, part 1, page 689. The consideration and inclusion of the said bonds in the determination of the taxable value of the shares of stock of the appellant constitute a taxation of the said bonds and therefore the resettlement made is in violation of the hereinbefore cited Act of the Philippine Legislature and the Acts of Congress of the United States and is a violation of Section 8 of Article I of the Constitution of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general [fol. 9] laws;" and the 14th Amendment to the Constitution of the United States by depriving the appellant of its property without due process of law and denying to it the equal protection of the laws.

3. That in the determination of the said taxable value of the shares in the amount of $458,028 the fiscal officers of the Commonwealth considered and included the following bonds of the market value of $5,400, 1st Carolina Jt.

St. Land Bank 5s 5/1/52 of the market value of $1,650 and Dallas Joint Stock Land Bank 5s of 1952 of the market value of $3,750. Such consideration and inclusion were erroneous, illegal and void for the reason that these bonds were issued under the provisions of "The Federal Farm Loan Act" of the United States Congress of July 17, 1916 (Chap. 245, 39 U. S. Statutes at Large, p. 360 et seq., Sec. 16) and are not taxable by the Commonwealth of Pennsylvania (Section 26, "The Federal Farm Loan Act" supra). The consideration and inclusion of the said bonds in the determination of the taxable value of the shares of stock of the appellant constitute a taxation of the said bonds which are deemed and held to be instrumentalities of the United States Government and therefore the settlement made is in violation of "The Federal Farm Loan Act" supra, and is a violation of Section 8 of Article I of the Constitution of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;" [fol. 10] and the 14th Amendment to the Constitution of the United States by depriving the appellant of its property without due process of law and denying to it equal protection of the laws.

4. That the said resettlement of tax in the amount of $2,290.14 constitutes a taxation of the United States securities of the market value of $134,907. (See specification of objection 1, supra), and therefore constitutes the taxation of instrumentalities of the United States Government, violates Section 3701 Revised Statutes, 31 U. S. C., Section 742 and is a violation of Clause 2 of Section 8 of Article I of the Constitution of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;" and the 14th Amendment to the Constitution of the United States by depriving the appellant of its property without due process of law and denying to it the equal protection of the laws.

5. That the said resettlement of tax in the amount of $2,290.14 constitutes a taxation of Philippine Islands 5½%

Public Improvement Loan due Aug. 1, 1941, Act of Philippine Legislature Number 2940, bonds, of the market value of $10,900. (See specification of objection 2, supra), and therefore violates the provisions of the Act of Congress of August 29, 1916, Act of Congress of July 21, 1921 and Act of the Philippine Legislature Number 2940 approved Feb-
[fol. 11] ruary 5, 1921, the Act of Congress of February 6, 1905, chap. 453, Vol. 33, U. S. Statutes at Large, part 1, page 689, and is a violation of Section 8 of Article I of the Constitution of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;" and the 14th Amendment to the Constitution of the United States by depriving the appellant of its property without due process of law and denying to it the equal protection of the laws.

6. That the said resettlement of tax in the amount of $2,290.14 constitutes a taxation of Joint Stock Land Bank bonds of the market value of $5,400. (See specification of objection 3, supra), and therefore constitutes the taxation of instrumentalities of the United States Government, violates the provisions of "The Federal Farm Loan Act" of the United States Congress of July 17, 1916 (Chap. 245, 39 U. S. Statutes at Large, p. 360 et seq. Sec. 16) and is a violation of Section 8 of Article I of the Constitution of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;" and the 14th Amendment to the Constitution of the United States by depriving the appellant of its property without due process of law and denying to it the equal protection of the laws.

[fol. 12] 7. That in the determination of the said taxable value of the shares in the amount of $458,028 the fiscal officers of the Commonwealth deducted from the total value of the said shares of stock as determined by them in the amount of $466,914 the sum of $8886 as "deductions for shares of other corporations owned." The said sum of $458,028, the said sum of $466,914, and the said sum of $8886 were determined by the fiscal officers of the Com-

monwealth in the manner set forth in Exhibit "1" hereto attached. The said deduction of $8886 is erroneous, illegal and void for the following reasons: (a) As appears by Exhibit "2" attached hereto there were omitted from the list of exempt shares of stock owned by the appellant 160 shares of American Tel. & Tel. of the market value of $30,020 and 200 shares of F. & W. Grand 6½s, pfd. of the market value of $17,625. (b) As appears by Exhibit "2" attached hereto the value of the exempt shares of stock owned by the appellant and set forth in Exhibit "1" should have been the values as set forth in Exhibit "2" hereto attached and by a comparison of said Exhibit "1" and Exhibit "2," the exempt value of the shares of stock owned by the appellant should have been the sum of $155,989 instead of $71,373 as fixed by the fiscal officers of the Commonwealth. (c) That the amount of the "deductions for shares of other corporations owned" should have been $155,989 which is the exempt value of said shares of stock as set forth in Exhibit "2" hereto attached. The said value of the exempt shares of stock in the amount of $155,989 should have been deducted from the value of the [fol. 13] total assets of the appellant in order to relieve them from taxation in accordance with the purpose and intent of the legislature as expressed in the Act of April 25, 1929, P. L. 673.

8. If the tax imposed under and by the provisions of the said Act of April 25, 1929, P. L. 673, and the resettlement of tax here made against the appellant under and by the provisions of the said Act of Assembly be held to be a tax upon the shares of capital stock subscribed for or issued by the appellant or upon the shares of capital stock subscribed, as of the date of the Report required to be made under and by the provisions of the said Act of Assembly, for or issued by the appellant then and in such case the shares of stock owned by non-residents of the Commonwealth of Pennsylvania in the aforesaid tax year are not subject to tax and their taxation is in violation of the 14th Amendment to the Constitution of the United States for the reason that thereby the owners of the said shares of stock and the "Trust" Company which shall exercise the option to pay the amount of the tax from its general fund are deprived of their property without due process of law and have had denied to them the equal pro-

tection of the laws. Hence, if the said tax so resettled as aforesaid be a tax upon the shares of stock as aforesaid, then and in such case the said resettlement was erroneous, illegal and void for the reason that thereby tax was imposed by the Commonwealth upon 166 shares of stock of the appellant which were owned during the said tax year by non-residents of the Commonwealth of Pennsylvania [fol. 14] without constitutional or statutory authority so to do.

II. That the Petition for Resettlement filed with the Department of Revenue and the Petition for Review filed with the Board of Finance and Revenue of the Commonwealth of Pennsylvania are hereby made part of this appeal.

Schuylkill Trust Company, by Norman S. Farquhar, President. (Seal.)

Attest: Ralph W. Deitrich, Secretary.

Duly sworn to by Norman S. Farquhar. Jurat omitted in printing.

[fol. 15] EXHIBIT "1".

The order of the fiscal officers of the Commonwealth, that is to say, the Board of Finance and Revenue, made January 26, 1933 resettled the tax as follows:

$$\text{"441,667 Plus 25,247 app.} \left(\frac{467,714}{3,755,882} \times 71,373\right)\text{"} = 458,038.$$

The said sum of $441,667, is the value of capital stock paid in, surplus and undivided profits. The said sum of $25,247 is the appreciation whereby the actual value of capital stock paid in, surplus and undivided profits became $466,914 and is the actual value of the shares as determined by the said fiscal officers. The numerator of the fraction, $467,714, is the actual value of the shares as the tax was originally settled against the appellant. The denominator of the fraction, $3,755,882, is the actual value of all the assets of the appellant as fixed in the original

settlement made by the Department of Revenue and the Department of the Auditor General less "Reserve for Depreciation" $46,432. The multiplicand, $71,373, is the value which the fiscal officers of the Commonwealth, that is to say, [fol. 16] the Board of Finance and Revenue, fixed as the deduction value of exempt and non-taxable shares of stock herein-below listed (*) and the result of such computation, $458,028, is the taxable value of the shares as determined by the said Board of Finance and Revenue to which the rate of tax was applied with a resultant tax in the amount of $2,290.14.

(*) Deduction value of exempt and non-taxable shares of stock allowed by the Board of Finance and Revenue in the amount of $71,373 hereinabove referred to.

Hercules (Pfd.)
Delaware & Hudson
N. Y. C. Railroad Company
Penna. Power & Light
Philadelphia National
Pomeroy's Incorporated
" " of 1932
Pennsylvania Railroad
Reading Company (2nd Pfd.)

The above recited fraction, $\frac{467,714}{3,755,882} \times 71,373,$

equals 8,886. This sum of $8,886 is the portion of the above stated deduction value (71,373) which the Board of Finance and Revenue in its resettlement deducted from the total value of the shares, $466,914, in order to determine the taxable value of the shares in the amount of $458,028 to [fol. 17] which it applied the rate of tax and thus resettled the tax against the appellant in the amount of $2,290.14.

EXHIBIT "2"

Exempt Shares of Stock

Shares	Corporation	Market Value
70	Delaware & Hudson	$9,520
200	F. & W. Grand 6½s, Pfd.	17,625
100	Hercules Pfd.	11,600
119	N. Y. C. R. R. Com	16,184
200	Penna. P. & L. Pfd, 5%	19,200
182	Phila. Ntl. Bank	20,202
100	Pomeroy's Inc. Pfd. 6% 1931	10,000
100	Pomeroy's Inc. Pfd. 6% 1932	9,975
100	Penna. R. R.	6,125
160	American Tel. & Tel	30,020
100	Reading Co. 2nd Pfd.	4,700
		$155,151
	Penna. P. & L., supra, (800) plus Reading Co., supra, (38)	.838
		$155,989

Docket No. R-931

In re SCHUYLKILL TRUST COMPANY

Petition for Review of action taken by the Department of Revenue and approved by the Department of Auditor [fol. 18] General on petition for resettlement of Tax on Shares for the year ending 12-31-30.

And Now to wit January 27th, A. D. 1933, I certify that the following is the action of the Board of Finance and Revenue of the Commonwealth of Pennsylvania in this matter:

"And now to wit January 26th, A. D. 1933, This account is resettled and tax on shares is hereby imposed as follows:

$$441{,}667 \text{ Plus } 25{,}247 \text{ app.} - \left(\frac{467{,}714}{3{,}755{,}882} \times 71{,}373\right)"$$

Certified copy of resettlement sheet, showing the amount due as a result of the Board's action, will be mailed by the Department of Revenue.

(See Board of Finance and Revenue Minute Book No. 5.)

By Order of the Board of Finance and Revenue:
Edward Martin, State Treasurer and Chairman. Leon D. Metzger, Secretary of Revenue. William A. Schnader, Attorney General. Charles A. Waters, Auditor General.

Attest: Walter J. Kress, Secretary Board of Finance & Revenue.

Copy mailed to John Robert Jones, Esq., 1202 Girard Trust Bldg. Philadelphia, Pa., on January 27th, 1933.

[fol. 19] Copy

Box 424-9253-129
Ledger
Page
Company

Schuylkill Trust Company, c/o John Robert Jones, Esq., 1202 Girard Trust Building, Philadelphia, Penna.

In Account With Commonwealth of Pennsylvania, Dr.

To settlement of Shares for the year 1930, Dated 1/26/32 superseded by order Board of Finance and Revenue. See Minutes Book, Docket No. R 931	$2,306.08
To settlement hereby made. Pursuant to said order	$2,290.14
Total	$4,596.22

Credit

By settlement date 1/26/32 superseded by order Board of Finance and Revenue as above	$2,306.08
Due Commonwealth by This Settlement	$2,290.14
By payment on superseded settlement 4/4/32	570.43 a/c

(Commonwealth

Balance Due {Corporation $1,719.71.

[fol. 20] Treasury Department,

Board of Finance and Revenue

Harrisburg, Pa., 1/26/33—193.

Settled:

By the Board of Finance and Revenue.

(Signed) Walter J. Kress, (Seal)

Department of Revenue

Harrisburg, Pa., Feb. 9, 1933.

I Hereby Certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and seal of office.

Leon D. Metzger, Secretary of Revenue. (Seal.)

IN COURT OF COMMON PLEAS

STIPULATION OF FACTS

It is stipulated and agreed by and between Philip S. Moyer, Deputy Attorney General, for the Commonwealth of Pennsylvania, plaintiff, and John Robert Jones, Esquire, attorney for Schuylkill Trust Company, defendant, as follows:

1. That the Schuylkill Trust Company filed its report for the twelve months ending December 31, 1930, in the Department of Revenue and that a tax designated by the Commonwealth as a "tax on shares" was settled against the said Schuylkill Trust Company by the Department of Revenue in the amount of $2,306.08 January 25, 1932, and approved [fol. 21] by the Department of the Auditor General January 26, 1932, under authority of the Act of June 13, 1907, P. L. 640, as last amended by the Act of April 25, 1929, P. L. 673; that subsequent thereto and in due course the Board of Finance and Revenue made a resettlement of the said tax January 26, 1933, by which a settlement was made against the Schuylkill Trust Company of tax in the amount of

$2,290.14 in accordance with the following formula and calculation:

$$441{,}667. + 25{,}247. - \left(\frac{467{,}714}{3{,}755{,}882.} \times 71{,}373.\right) = 458{,}028$$

with a resultant tax in the amount of $2,290.14. That in the said formula and calculation the sum of $441,667 was the amount of capital stock paid in plus the surplus and the undivided profits, as shown by the report of the appellant; that the sum of $25,247 was the amount of appreciation of the market value of total assets over the book value of total assets; that the numerator of the fraction, $467,714, was the aforesaid sum of $441,667, plus the said sum of $25,247; that the denominator of the fraction, $3,755,882, was the value of the total assets of the appellant; that the multiplicand $71,373, was arrived at by the taxing officers as follows: the capital stock report or tax on shares report of each of the corporations whose shares of stock are owned by the appellant was examined and the taxable value of the capital stock, and the value of the capital stock relieved from capital stock tax was ascertained from the settlement made against each of the corporations whose shares of stock are [fol. 22] owned by the appellant; the total number of issued and outstanding shares of stock of each of the said corporations was divided into the aforementioned taxable value of the capital stock and the value of the capital stock relieved from capital stock tax, and the figure thus obtained in each case was multiplied by the number of shares of stock of each of said corporations owned by the appellant which sums thus obtained, together with the market value of the shares of stock of the Pennsylvania Power and Light Company and Philadelphia National Bank (market value of these two being taken because settlement against these corporations for 1930 had not been made at the time of the settlement of the appellant's report for tax on shares) are set forth in a column in paragraph four, totalling $71,372.91, which total does not include any sum for ownership of 160 shares of stock of the American Telephone and Telegraph Company by the appellant because in examining the capital stock tax settlement made against this company for 1930, the taxing officers found that the taxable value of the capital stock was $75,233.00, and dividing this sum by the total number of shares of stock of said company issued and out-

standing, to wit, 17,956, 512 obtained a quotient of four mills which multiplied by the number of shares owned by the appellant, to wit, 160, made the sum of .64 cents, and this sum being less than one dollar was not used in making up the totals composing said multiplicand, to wit, $71,373; the total market value of all of these shares of stock including the shares of stock of the American Telephone and Telegraph Company, owned by the appellant, was $155,989; that the result of the formula and calculation, $458,028 was the actual value of the shares of stock of the appellant subject [fol. 23] to tax as determined by the Commonwealth to which the rate of tax of five mills was applied with a resultant tax in the amount of $2,290.14; that the taxing officials by their addition of $441,667 and $25,247 thus determined the amount of capital stock paid in, the surplus and undivided profits, to have an actual value of $467,714. (The error in addition is of no consequence); that the minor fraction of the formula and calculation, to wit, $\frac{467,714.}{3,755,882.} \times 71,373.$ = 8,886., was used by the taxing officers of the Commonwealth to ascertain the amount of deduction from the amount of capital stock paid in, surplus and undivided profits to which the taxing officers of the Commonwealth held the appellant was entitled by reason of its investment in the shares of stock of corporations (which shares of stock had a market value of $155,989 as set forth in paragraph 2 of this Stipulation) as such taxing officers of the Commonwealth construed and applied the said Act of June 13, 1907, P. L. 640, as last amended by the Act of April 25, 1929, P. L. 673, under the authority of which act the settlement of tax here in question was made against the appellant. This sum of $8,886 the taxing officers of the Commonwealth accordingly deducted from the $467,714 in order to determine the actual value of the shares of the appellant which the taxing officers of the Commonwealth held to be subject to the tax, to wit, $458,028.

2. That the market value of shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of capital stock tax or tax on shares was $155,989 and that such shares of stock were [fol. 24] included at such value in the value of the total assets hereinbefore set forth, to wit, $3,755,882. These

shares of stock and the respective market value of each are as follows:

70	shs.	Delaware & Hudson	$9,520
200	"	F. & W. Grand 6½s pfd.	17,625
100	"	Hercules pfd.	11,600
119	"	N. Y. C. R. R. Com.	16,184
200	"	Penna. P. & L. pfd. 5%	20,000
182	"	Phila. Nt. Bank	20,202
100	"	Pomeroy's Inc. pfd. 6% 1931	10,000
100	"	" " " " 1932	9,975
100	"	Penna. R. R.	6,125
100	"	Reading Co. 2nd pfd.	4,738
160	"	Amer. Tel. & Tel.	30,020
			$155,989

3. That there was included within the total value of assets hereinbefore set forth, to wit, $3,755,882, the following assets (described in the appeal and specification of objections 1, 2 and 3 as follows: first 9 lines of Number 1; first 6 lines of Numbers 2 and 3 respectively), at the values hereinafter stated, to wit:

United States Securities	$134,907
Philippine Islands 5½% Public Improvement Loan due Aug. 1, 1941, Act of Philippine Legislature Number 2940, bonds	10,900
Carolina Jt. St. Land Bank 5s 5/1/52	1,650
Dallas Joint Stock Land Bank 5s of 1952	3,750
	$151,207

[fol. 25] 4. That the multiplicand, to wit $71,373 of the taxing formula was arrived at as explained in paragraph one hereof, and was composed of the following:

70	shs.	Delaware & Hudson	$290.50
200	"	F. & W. Grand 6½s pfd.	1,258.00
100	"	Hercules pfd.	327.00
119	"	N. Y. C. R. R. Com.	1,611.41
200	"	Penna. P. & L. pfd. 5%	19,200.00
182	"	Phila Ntl. Bank	20,202.00
100	"	Pomeroy's Inc. pfd. 6% 1931	9,750.00
100	"	" " " " 1932	9,587.00
100	"	Penna. R. R.	4,393.00
100	"	Reading Co. 2nd pfd.	4,754.00
160	"	Amer. Tel. & Tel.	None
			$71,372.91

5. That the total number of shares set forth in the statement of the settlement of the tax made by the Commonwealth was 2,652½ shares and that 166 shares thereof were owned by nonresidents of the Commonwealth of Pennsylvania.

6. The parties hereto reserve the right to introduce additional evidence.

Philip S. Moyer, Deputy Attorney General for the Commonwealth of Pennsylvania. John Robert Jones, Attorney for the Schuylkill Trust Company.

July 18, 1933.

[fol. 26] IN COURT OF COMMON PLEAS

SUPPLEMENTAL STIPULATION OF FACTS

It is stipulated and agreed by and between Philip S. Moyer, Deputy Attorney General, for the Commonwealth of Pennsylvania, plaintiff, and John Robert Jones, Esquire, Attorney for Schuylkill Trust Company, defendant, as supplemental to the Stipulation of Facts filed with the Court July 18, 1933, as follows:

1. That the non-residents of the Commonwealth of Pennsylvania who were the owners of 166 shares of stock of the

defendant, as set forth in Paragraph Five of the Stipulation of Facts filed with the Court July 18, 1933, were natural persons.

2. That the charter of the defendant, the Schuylkill Trust Company, was granted and letters patent were issued October 17, 1887.

3. That the defendant, the Schuylkill Trust Company, paid to the Commonwealth of Pennsylvania the sum of $570.43 on Apr. 4, 1932, as tax owing for the twelve months ending December 31, 1930. The defendant denies the validity of the tax settlement and the tax resettlement made against it for the year in question and claims that no further tax is owing for said year.

Philip S. Moyer, Deputy Attorney General, for the Commonwealth of Pennsylvania. John Robert Jones, Attorney for Defendant.

[fol. 27] IN COURT OF COMMON PLEAS

STATEMENT OF COUNSEL

Harrisburg, Pa., July 18, 1933, 10 A. M.

Before Honorable William M. Hargest, President Judge, Honorable Frank B. Wickersham, Additional Law Judge, and Honorable John E. Fox, Additional Law Judge.

Appearances:

For Plaintiff: Honorable Philip S. Moyer, Deputy Attorney General.

For Defendant: John Robert Jones, Esq.

Mr. Moyer: If Your Honors please, the case set for hearing this morning is the case of Commonwealth of Pennsylvania v. Schuylkill Trust Company, entered to No. 61 Commonwealth Docket 1933. This is an appeal by the Schuylkill Trust Company from a tax settled against it for the tax on shares, it is called, under the provisions of the Act of June 13, 1907, P. L. 640, and last amended by the Act of April 25, 1929, P. L. 673, for a twelve month period ending December 31, 1930.

The particular questions involved in the case, as we take them, in a brief way, from the appeal, are: must United States securities in this case be excluded in arriving at the actual value of the shares of the trust company subject to tax. Then there is a second question must Philippine Island bonds, referred to in particular language in the specification in objection No. 2, be excluded in arriving at the actual [fol. 28] value of the shares of the trust company subject to tax. Then No. 3 must the joint stock land bank bonds be excluded in arriving at the actual value of the shares subject to tax.

Now the fourth specification of objection is to the effect that in arriving at the actual value of shares subject to tax, no deduction is made for 160 shares of the American Telephone & Telegraph Company owned by the defendant and 200 shares of the F. & W. Grand 6½ Preferred owned by the defendant.

The Court (Judge Hargest): A Pennsylvania corporation?

Mr. Moyer: A Pennsylvania corporation, yes, while A. T. & T. is not a Pennsylvania, it is a foreign one registered to do business here.

The Court (Judge Fox): It pays tax?

Mr. Moyer: Yes, as a foreign corporation. Then the fifth specification of objection is, in substance, to the market value of the shares of stock owned by the defendant in other corporations which paid a capital stock tax in Pennsylvania, to wit, $155,989, having been used as a deduction in arriving at the actual value of the shares subject to tax in a proportionate way.

The Court: Read that again.

Mr. Moyer: The fifth objection as I was stating, was to the effect that in arriving at the actual value of these shares subject to tax the Commonwealth used a proportionate method for arriving at the tax and exempt value of [fol. 29] these shares of stock, or rather as the Act of Assembly says, the value at which the stock of these corporations was made liable for tax, or was relieved from the capital stock tax.

The Court (Judge Hargest): Instead of a flat deduction.

Mr. Moyer: Instead of a flat deduction, a proportionate method, as will be explained fully later and as set forth in the Statement of Facts.

The Court (Judge Wickersham): The Bell Telephone Company case ten years ago was decided and they used the proportionate method in arriving at the amount of tax.

Mr. Moyer: I don't recall the point in that case.

The Court (Judge Wickersham): There were about twenty pages of conclusions.

Mr. Moyer: The proportionate method in this case, as will be explained later, was used because of the decision in the Hazelwood Savings and Trust case, which will be explained very fully and entirely because of the decision in that case. In other words, it wasn't proven in this case that the shares were purchased out of original capital and the Commonwealth might not have allowed any deduction at all because of that, but they did allow a proportionate deduction, as will be explained, and as I said, was entirely proper in the Hazelwood case. Of course that is one of the contentions and matters of dispute in this case.

[fol. 30] Now the sixth objection was, in substance, were the taxing officers of the Commonwealth, in arriving at the actual value of the shares of stock subject to tax, required to deduct the market value of these shares of stock $155,989, from the value of the total assets of the defendant, in order to relieve them from tax and to arrive at the tax on shares as provided by this particular Act of 1907, as amended last by the Act of 1929.

And the last objection in the appeal is to the effect that if this is a tax on shares under the Act in question are the 166 shares of stock owned by non-residents of the Commonwealth subject to tax, it being agreed in the stipulation as to facts that there are 166 shares of the stock of the trust company owned by non-residents of Pennsylvania.

The Court (Judge Fox): Do you mean the stock of the trust company itself?

Mr. Moyer: Yes. The contention, as it appears to me in the various objections that I have just detailed briefly, is that it is a tax on the assets of the corporation. Now I don't want to tread on Mr. Jones' shoes here, he will explain his position, but as I am taking the time here now to explain it——

The Court (Judge Hargest): You applied the loan tax instead of the capital stock tax, in effect?

Mr. Moyer: Yes, it is something of that nature. Therefore, if it is not a tax on property against the assets of the

corporation, as Mr. Jones would appear to contend in the objections just previously detailed he says in No. 7 objection that if it is then a tax on shares we are entitled to be [fol. 31] relieved from the tax on one hundred and sixty-six of these shares because they are owned by non-residents of Pennsylvania and there is no jurisdiction in this State to tax them because of the fact that the owners are outside of the State.

Now so much for the questions involved. We have a stipulation to try without a jury in this case, which we desire to file, or have introduced in evidence first and filed and with it we have the appeal and specification of objections, which we desire to introduce in evidence, and the report of shares of this company, Schuylkill Trust Company, for the twelve month period ending December 31, 1930, with the settlement thereon of the taxing officers of the Commonwealth, the settlement in this case having been made on January 25, 1932, by the Department of Revenue and approved on January 26, 1932, by the Department of the Auditor General. A petition for resettlement was duly filed with the Department of Revenue and was refused by that Department, with the approval of the Department of the Auditor General and in due course a petition for a review was filed with the Board of Finance and Revenue. Upon the hearing of the matter before the Board, the Board resettled the original settlement made in this case and it is from this settlement of the Board of Finance and Revenue that the appeal is now taken. In brief this resettlement now before the Court is on a certain taxing formula, which I will briefly explain.

Now the first figure $441,667 is the capital paid in, surplus and undivided profits of this company, as reported in its report on shares. You will notice to that is added $25,247 that is determined by the Board as appreciation on [fol. 32] these stocks and assets of the corporation, to be added to the capital paid in, surplus and undivided profits. Then there is a minus sign, which indicates that from this total is to be subtracted the result of this so-called minor fraction, the numerator of which is composed of the first figure, $441,667, which I have stated was capital paid in, surplus and undivided profits, plus the appreciation of $25,247.

Now there is a slight error that was made in the addition, which we have noted in the stipulation here is of no conse-

quence, that is what was meant was to be the total of these two. The denominator of this minor fraction was the total assets of this trust company for that period. The multiplicand, $71,373, is detailed in the stipulation of facts to be made up of the items resulting from this determination by the Department. They took the capital stock tax reports of each of the companies whose stock was owned by this appellant. They examined the settlements made in each of those cases to find the taxable value of that particular stock and the value relieved from capital stock, I should add that is the taxable value for capital stock tax purposes and in each case the amount relieved from capital stock tax. For instance, if it was a manufacturing corporation or otherwise exempt, that determined that situation. Or, if there was tax on shares it was the value thereof, the taxable value thereof or relieved from tax under those circumstances. This amount that was then gotten by those taxing officers was divided by the total number of issued and outstanding shares of stock of the particular corporation they were dealing with. That quotient, which we might call the taxable value allocated to each share, or the amount relieved [fol. 33] from tax and allocated to each share, was then multiplied by the number of shares of that particular company owned by this defendant. And so they went down the list, taking each corporation——

The Court (Judge Hargest): That is the sum total of the untaxed proportion of those companies?

Mr. Moyer: That is the sum total of $71,000, we might say roughly, is the sum total of the tax and exempt value of the shares of stock which this company owned, the tax and exempt value.

The Court (Judge Fox): It is not the number of shares?

The Court (Judge Hargest): It is the untaxed part that you are claiming?

Mr. Moyer: We are saying that the seventy-one thousand represents the tax and exempt value of the particular shares of stock owned by this defendant. I can explain it a little better in a moment when I get to something else.

The Court (Judge Wickersham): That is, the value of the shares would be $458,028?

Mr. Moyer: That is the final actual value subject to tax. And I want to explain something further: In considering these shares as stock owned by this defendant to get the

tax and exempt value as we may call it now roughly, there were two corporations that the taxing officer when he came to settle this case, found had not been settled by the [fol. 34] taxing officers, the Pennsylvania Power & Light and the Philadelphia National Bank, and when the taxing officers dealt with those they put in the market value for that particular period for those shares, because they did not know, not only didn't know, but they had no way of getting at the tax and exempt value because the report for capital stock had not been settled yet in those cases, and in the case of the National Bank report the tax on shares had not been settled. So the officers took the market value. Now when it came to the last one on the list, which is the last on the list as we have it here as a stipulation, 160 shares of American Telephone & Telegraph Company, when the officers settled this, or resettled it, the officers on the Board examined the report of the American Telephone & Telegraph Company and they found that the taxable value in that case, as settled for capital stock tax of this corporation, was $75,233, and they also found that the issued and outstanding shares of stock of this company was 17,956,512 shares. Following the method that they had pursued now with the others, they divided the shares outstanding and issued into the taxable value and they got 4 mills, which when multiplied by the 160 shares, gave 64 cents. This amount being less than a dollar the taxing officers did not put it in the compilation at all because they were dealing with round numbers, they didn't put it in the compilation. That is the reason that after the word, when you see the stipulation, when you come to American Telephone & Telegraph, so far as any tax and exempt allowance for those shares, is marked none, and that is the explanation as made in the stipulation.

[fol. 35] The Court (Judge Hargest). Mr. Jones, I do not find in your brief a formula and a calculation as you apply it.

Mr. Jones: Yes, at the end. I will explain it as I go along. I prefer to take each point separately than to confuse the Court. It is at the end of my brief. I am quite sure.

Mr. Moyer: Now then, with this explanation of how the multiplicand of this minor fraction was arrived at, we get the quotient of 8886, which quotient is deducted from the

total of capital paid in, surplus and undivided profits to wit, the $441,667, plus the appreciation of $25,247, and the taxing officers get $458,028 as their determination under this Act of Assembly as the actual value of the shares of stock subject to this tax on shares, which gave a tax on shares in the amount of $2,290.14.

Now I understand that there is a small amount which was paid in April of last year and we will have an additional stipulation filed at the Court—I didn't know that until this morning about this payment, we will file an additional stipulation showing the actual balance due on the settlement.

Now it is further agreed between counsel that if in any way during the argument of this matter, during the time the Court considers the briefs, there are any facts in this case that are not sufficiently set forth in this stipulation, or otherwise the Court considers any explanation, or either counsel believes it needs explanation or detail, counsel have agreed to file an additional stipulation, because here it is not a case of trying to hold to a settlement just as it stands [fol. 36] for the mere purpose of getting this tax, it is to settle these questions that are raised and to have them definitely disposed of.

Mr. Jones just called my attention to the fact that the petition for resettlement and the petition for review was not referred to as being offered in evidence. I desire that those papers at present be offered in evidence and in addition also the settlement as made by the Board of Finance and Revenue, from which this appeal is taken, together with all other relevant papers that have to do with this particular settlement and appeal.

(Argument.)

I hereby certify that the proceedings and evidence are contained fully and accurately in the above notes taken by me on the hearing of the above cause and that this copy is a correct transcript of the same.

John Ruth, Official Stenographer.

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

Frank B. Wickersham, A. L. Judge.

[fol. 37] IN COURT OF COMMON PLEAS

DEFENDANT'S REQUESTS FOR CONCLUSIONS OF LAW AND ANSWERS OF THE COURT

The Schuylkill Trust Company, Defendant in the above entitled case, requests your Honorable Court to find the following Conclusions of Law:

1. A tax imposed upon shares of stock as shares is a personal levy against the holder of the shares without any intent to reach the assets of the corporation which issued the shares.

Affirmed.

2. A tax imposed upon shares of stock as shares is a tax upon the stockholders' interest without diminution on account of the kind of assets which constitute the property and capital stock of the corporation which issued the shares.

Affirmed.

3. Shares of stock are intangible personal property, a tax imposed upon them is a personal property tax and their situs for taxation is the domicile of their owner, hence shares of stock owned by non-residents of Pennsylvania are not subject to tax except in the case of shares of stock issued by national banks located in the State, the authority to tax which national bank shares owned by non-residents and residents of the State being given by United States Revised Statutes, Section 5219.

Refused.

[fol. 38] 4. The tax imposed by the Act of April 25, 1929, P. L. 673, is not a tax upon the stockholders' interest in the shares. Under the method provided in the said act to determine the value to which the rate of tax is directed to be applied there is a diminution from the amount of capital stock paid in, surplus and undivided profits of the trust company by reason and on account of the kind of assets which constitute the property and capital stock of the trust company.

Refused.

5. The tax imposed by the Act of April 25, 1929, P. L. 673, is not a tax upon the stockholders' interest in the shares, for the reason that though the interest of the stock-

holder be the same in the case of two or more trust companies, the tax is not the same in each such case, the difference in taxable value and consequent difference in tax being caused by the amount and value of the assets owned by each trust company which are exempted under the provisions of the act.

Refused.

6. The tax imposed by the Act of April 25, 1929, P. L. 673, is not imposed upon the shareholders' interest but upon assets owned by the trust company, the taxable value of which is determined by deducting and eliminating from consideration the full value of the assets which are exempted by the said act and assets which the state has no jurisdiction to tax.

Refused as stated.

[fol. 39] 7. The amount of capital stock paid in, the surplus and undivided profits of the trust company being the difference between the value of the total assets and the amount of assets sufficient to cover liabilities to others than stockholders, it is required by the Act of April 25, 1929, P. L. 673, that in determining the taxable value to which the rate of tax is directed to be applied, assets in an amount sufficient to cover liabilities to others than stockholders be deducted from the value of the total assets of the defendant trust company.

Refused as stated.

8. In determining the taxable value to which the rate of tax is to be applied under the Act of April 25, 1929, P. L. 673, the trust company must be regarded as though it did not own the assets which are declared by the act to be exempt and therefore shares of stock issued by corporations "liable to pay to the Commonwealth a capital stock tax or relieved from the payment of capital stock tax or tax on shares" must be deducted at their full value from the value of the total assets of the defendant trust company.

Refused.

9. In determining the taxable value to which the rate of tax is to be applied under the Act of April 25, 1929, P. L. 673, the trust company must be regarded as though it did not own the assets which are non-taxable such as United States securities, Philippine Islands bonds and Joint Stock

Land Bank bonds, therefore such securities and bonds must [fol. 40] be deducted at their full value from the value of the total assets of the defendant trust company.

Refused.

10. Assets owned by the defendant trust company consisting of shares of stock issued by national banks being subject to tax at their actual net asset value under the Act of July 15, 1897, P. L. 292, as amended, against their owner, the defendant, such national bank shares cannot be made the basis, directly or indirectly, of other or further taxation and therefore in determining the taxable value to which the rate of tax is directed to be applied under the Act of April 25, 1929, P. L. 673, such shares must be deducted at their full value from the value of the net assets, that is, from the sum of the amount of capital stock paid in, surplus and undivided profits of their owner, the defendant.

Refused.

11. Since under and by the provisions of the Act of April 25, 1929, P. L. 673, the value of the assets to which the rate of tax is directed to be applied is determined by an express deduction, elimination and exemption of shares of stock issued by corporations "liable to pay to the Commonwealth a capital stock tax or relieved from the payment of capital stock tax or tax on shares" and since under the said act as construed and applied by the Commonwealth and the resettlement of tax made against this defendant under the alleged authority of the said act there is no deduction, elimination or exemption of United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds owned [fol. 41] by this defendant of the value of $151,207, the said Act of April 25, 1929, P. L. 673, as construed by the taxing officials of the Commonwealth and the resettlement of tax made against this defendant under the alleged authority of the said Act of Assembly discriminate in favor of the said described shares of stock exempted under the provisions of the said act and against the said United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds.

Refused.

12. Under the provisions of the Act of April 25, 1929, P. L. 673, as construed by the taxing officials of the Commonwealth in the said resettlement of tax made against this defendant, tax is imposed upon the United States se-

curities, Philippine Islands bonds and Joint Stock Land Bank bonds of the total value of $151,207.

Refused.

13. The Act of April 25, 1929, P. L. 673, as construed and applied by the Commonwealth to this defendant and the resettlement of tax made against the defendant impose a tax upon United States bonds and securities of the market value of $134,907, impose a tax upon instrumentalities of the United States Government, violate Section 3701 Revised Statutes, 31 U. S. C., Section 742, and are a violation of Clause 2 of Section 8 of Article I of the Constitution of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall [fol. 42] be levied and collected under general laws;" and the 14th Amendment to the Constitution of the United States by depriving the defendant of its property without due process of law and denying to it the equal protection of the laws.

Refused.

14. The Act of April 25, 1929, P. L. 673, as construed and applied by the Commonwealth to this defendant and the resettlement of tax made against the defendant impose a tax upon Philippine Islands 5½% Public Improvement Loan due Aug. 1, 1941, Act of Philippine Legislature Number 2940, bonds, of the market value of $10,900, violate the provisions of the Act of Congress of August 26, 1916, Act of Congress of July 21, 1921 and Act of the Philippine Legislature Number 2940 approved February 5, 1921, the Act of Congress of February 6, 1905, chap. 453, Vol. 33, U. S. Statutes at Large, part 1, page 689, and are a violation of Section 8 of Article I of the Constitution of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;" and the 14th Amendment to the Constitution of the United States by depriving the defendant of its property without due process of law and denying to it the equal protection of the laws.

Refused.

[fol. 43] 15. The Act of April 25, 1929, P. L. 673, as construed and applied by the Commonwealth to the defendant and the resettlement of tax made against the defendant impose a tax upon Joint Stock Land Bank bonds of the market value of $5,400, impose a tax upon instrumentalities of the United States Government, violate the provisions of "The Federal Farm Loan Act" of the United States Congress of July 17, 1916 (Chap. 245, 39 U. S. Statutes at Large, p. 360 et seq. Sec. 16) and are a violation of Section 8 of Article I of the Constitution of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;" and the 14th Amendment to the Constitution of the United States by depriving the defendant of its property without due process of law and denying to it the equal protection of the laws.

Refused.

16. The Act of April 25, 1929, P. L. 673, as construed and applied by the Commonwealth to this defendant and the resettlement of tax made against the defendant wherein Philadelphia National Bank shares of the value of $20,202 were not deducted from the value of the net assets of the defendant and not eliminated entirely from consideration in determining the taxable value to which the rate of tax was applied discriminate against and impose a tax upon the said shares of stock and violate the provisions of Section 5219 of the Revised Statutes of the United States. Such [fol. 44] shares of stock being subject to tax under the Act of July 15, 1897, P. L. 292, as amended, against their owner, they cannot be made the basis, directly or indirectly, of any other or further taxation.

Refused.

17. The Commonwealth being required by the provisions of Section 5219 of the Revised Statutes of the United States to deduct the value of the Philadelphia National Bank shares owned by the defendant from the value of the net assets, that is, from the amount of capital stock paid in, surplus and undivided profits, is required in order to preserve uniformity of taxation to make a similar deduction of all of the exempt assets of the defendant of the total

value of $155,989 consisting of "shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of capital stock tax or tax on shares," and by its failure to make such deduction the Act of April 25, 1929, P. L. 673, as construed and applied by the Commonwealth to this defendant and the resettlement of tax made against the defendant violate Section 1, Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;" and the 14th Amendment to the Constitution of the United States by depriving the defendant of its property without due process of law and denying to it the equal protection of the laws.

Refused.

[fol. 45] 18. The tax imposed by the Act of April 25, 1929, P. L. 673, should have been settled against this defendant trust company upon a taxable value determined by deducting from the value of the total assets in the amount of $3,755,882. (1) assets sufficient to cover liabilities to others than stockholders in the amount of $3,334,599.93 (2) the full value of the exempt shares of stock described in the act, including the value of the Philadelphia National Bank shares, in the amount of $155,989 and (3) the value of United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds in the amount of $151,207, thereby leaving a taxable value in the amount of $114,086.07, tax upon which at the rate of five mills is $570.43.

Refused.

19. The defendant having paid tax to the Commonwealth in the amount of $570.43, no tax is owing to the Commonwealth and judgment should be entered in favor of the defendant with costs.

Refused.

John Robert Jones, Attorney for Defendant.

[fol. 46] IN COURT OF COMMON PLEAS

OPINION—October 19, 1933

By the COURT:

This is an appeal from the order of the Board of Finance and Revenue upon a tax settlement of said board against the defendant, being the resettlement approved January 26, 1933.

It was agreed by the attorney general and counsel for the defendant that a trial by jury be dispensed with in the above stated case, and the same be submitted to the decision of the court, to be heard and determined upon the provisions of an act of assembly approved April 22, 1874, P. L. 109.

The facts have been agreed upon; the method used in arriving at the tax is not objected to; and the only question is whether or not the accounting officers have included as taxable certain shares and securities which the defendant claims are exempt, and whether the tax involved is a tax on shares or a tax on personal property. These questions are more specifically stated as follows:

Questions Involved

1. Must United States securities be excluded in arriving at the actual value of the shares of the trust company subject to tax?

2. Must Philippine Island bonds be excluded in arriving at the actual value of the shares of the trust company subject to tax?

[fol. 47] 3. Must Joint Stock Land Bank bonds be excluded in arriving at the actual value of the shares of the trust company subject to tax?

4. It is claimed that in arriving at the actual value of the shares of stock of the defendant subject to taxation a flat deduction should be allowed for 160 shares of American Telephone & Telegraph Company owned by the defendant, and 200 shares of F. & W. Grand 6½s preferred, owned by the defendant, which companies are Pennsylvania corporations paying a capital stock tax.

5. Should the market value of the shares of stock owned by the defendant in other corporations, which paid a capital

stock tax in Pennsylvania, to wit, $155,989, have been used as a deduction in arriving at the actual value of the shares subject to tax instead of the tax and exempt value of said stock, to wit, $71,373?

6. Were the taxing officers, in arriving at the actual value of the shares of defendant subject to tax, under the provisions of the Act of April 25, 1929, P. L. 673, required to deduct the sum of $155,989, the market value of the shares of stock of the defendant in other Pennsylvania corporations, from the value of the total assets of the defendant in order to relieve them from taxation?

7. Is the tax imposed by the said Act of 1929 a tax upon shares of the defendant? and if so are the 166 shares of stock owned by non-residents of the commonwealth subject to the tax on shares?

[fol. 48] Discussion

We will consider the seventh question first as much of the briefs of the attorney general and counsel for the defendant is devoted to that proposition, it being contended by the commonwealth that the Act of 1907, as amended, imposes a tax upon shares qua share; whereas counsel for the defendant corporation insists that the tax imposed by the said act, as amended, is a tax on personal property and that the decisions of the Supreme Court construing the personal property tax Act of June 17, 1913, P. L. 505, should apply and control the instant case.

An exhaustive history of the Acts of Assembly imposing tax upon corporations in Pennsylvania is submitted by the attorney general. We think however, that in discussing this question we need only refer to the Act of June 13, 1907 P. L. 640, and its amendments.

Section 1 of the act provides, inter alia:

"* * * and every company * * * shall, on or before the twentieth day of June in each and every year, make to the Auditor General a report in writing * * * setting forth the full *number of shares* of the capital stock subscribed for or issued by such company, and the actual value thereof, * * *; and thereupon it shall be the duty of the Auditor General to assess such *shares* for taxation at the

rate of five mills upon each dollar of the actual value thereof, the actual value of each share of stock to be ascertained and fixed by *adding together the amount of capital* [fol. 49] *stock paid in, the surplus and undivided profits, and dividing this amount by the number of shares.* * * * After the Auditor General shall have fixed the value of the *shares of stock* in any such company by the method hereinbefore provided, and settled an account according to law, he shall thereupon transmit to the president, cashier, or treasurer of such company a copy of such settlement, showing the valuation and assessment so made by him and the amount of tax due the Commonwealth on *all such shares.* And it shall be the duty of the president, secretary, or treasurer of any such company, immediately upon the receipt of said settlement, to post the same in a conspicuous place in such company's place of business so as to give notice to the *shareholders* of such valuation; and it shall be the duty of the Auditor General to hear any *shareholder* upon the subject of the valuation of such *shares of stock,* at the Auditor General's office, within a period of thirty days from the date of said settlement. It shall be the duty of every such company, within a period of forty days after the date of such settlement by the Auditor General, at its option to pay the amount of said tax to the State Treasurer from its general fund, *or collect the same from its shareholders* and pay over to the State Treasurer * * * *.*" (Italics are ours.)

This section further provides that if the officers refuse to make such report or make a false report, the auditor general, after having "ascertained the actual value of *each share* (Italics are ours) of the capital stock of such company from the best information he can obtain, add thereto [fol. 50] fifty per centum as a penalty * * *." This section also provides:

"* * * That in case any such company shall collect annually from the *shareholders* thereof, or from the general fund of said company, said tax of five mills on the dollar upon the value of all the shares of stock of said company, the value of *each share* of stock to be ascertained and fixed by adding together so much of the capital stock paid in, the surplus and undivided profits as is not invested in shares of stock of corporations liable to pay to the Common-

wealth a capital stock tax or tax on *shares,* and dividing this amount by the number of *shares* of such title insurance or trust company, and pay said tax into the State Treasury, on or before the first day of March in each year, the *shares,* and so much of the capital stock, surplus, profits, and deposits of such company as shall not be invested in real estate, shall be exempt from all other taxation under the laws of this Commonwealth." (Italics are ours.)

It will be observed from the above quotations that the Act of 1907 provides a complete system for assessing and collecting tax on shares of stock of a trust company.

The Act of 1907 was amended by the Act of July 11, 1923, P. L. 1071, providing a different date for making and filing with the auditor general a report of said trust companies, and slightly changing the language of the Act of 1907 so as to read:

"* * * the actual value of *each share* of stock to be ascertained and fixed by adding together *so much of* the amount [fol. 51] of capital stock paid in, the surplus, and undivided profits *as is not invested in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax or tax on shares,* and dividing this amount by the number of shares. * * *" (Italics are ours.)

Said Act of 1907 was again amended by the Act of May 7, 1927, P. L. 853, as follows:

"* * * the actual value of each share of stock to be ascertained and fixed by adding together so much of the amount of capital stock paid in, the surplus, and undivided profits as is not invested in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, *or relieved from the payment of capital stock tax* or tax on shares, and dividing this amount by the number of shares. * * *" (Italics are ours.)

The following words in the Act of 1907 are omitted in the Act of 1927:

"in case any such company shall collect annually from the shareholders thereof, or from the general fund of said company, said tax of five mills on the dollar upon the value of all the shares of stock of said company,—the value of

each share of stock to be ascertained and fixed as hereinbefore provided, and pay said tax";

so that the sentence reads: "That *upon the payment of the tax fixed by this act* into the State Treasury the *shares*, and so much of the capital stock, surplus, profits, and deposits of such company as shall not be invested in real estate [fol. 52] shall be exempt from all other taxation under the laws of this Commonwealth." (Italics are ours.)

This brings us to the amendment of the Act of 1907 by the Act of April 25, 1929, P. L. 673, which changes the date for making the report on the part of trust companies, requiring said report to be filed with the Department of Revenue, but makes no change in the method of assessing the value of "such shares for taxation." To clarify this amendment we quote from the amended section (see page 675), which, after referring to the report to be made by the trust company, setting forth the full number of shares and capital stock provides:

"* * * and thereupon it shall be the duty of the Department of Revenue to assess *such shares* for taxation at the rate of five mills upon each dollar of the actual value thereof, the actual value of each share of stock to be ascertained and fixed by adding together so much of the amount of capital stock paid in, the surplus, and undivided profits as is not invested in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of capital stock tax or tax on shares, * * *."

Otherwise the act does not depart materially from the Act of 1907 as theretofore amended, except that from the Act of 1929 is omitted certain provisions in the Act of 1907 for the reason that said omissions are now incorporated in section 807 of the Fiscal Code, Act of April 29, 1929, [fol. 53] P. L. 343, which was passed at the same session.

Said Act of 1929 amends the Act of 1907 by striking therefrom the proviso which had to do with the failure or refusal of trust companies to make the report required; and also the proviso which had to do with the requirement placed upon the president, secretary or treasurer of the company to post the notice of the settlement as aforementioned, for the reason that these latter provisos were also incorporated in section 1705 of said Fiscal Code of 1929.

In quoting from the Act of 1907 and its amendments it clearly appears that the intention of the Legislature was to tax shares of stock. The term "shares of stock" appears many times in the Act of 1907 and is not omitted in the amendatory acts, including the Act of 1929 upon which act the present settlement was made.

In Commonwealth v. Mortgage Trust Co. of Penna., 227 Pa. 163, it was held:

"The Act of March 30, 1811, 5 Sm. L. 228, was in no way affected by the Acts of June 8, 1891, P. L. 229, and June 13, 1907, P. L. 640, and therefore the remedy provided by that act for the settlement and collection of taxes on the *stock* of trust companies was operative as to all such taxes as had accrued before the Act of June 13, 1907, P. L. 640 became operative."

[fol. 54] Commenting upon the policy of the commonwealth it was said by Mr. Justice Elkin, writing the opinion of the Supreme Court (page 175) as follows:

"* * * The policy of the commonwealth for more than twenty years was to tax the capital stock of these companies in the same manner as other corporations created under the general corporation act of 1874 were taxed. They made their reports to the auditor general under the general revenue acts of 1879, 1889 and 1891, and other statutes, just as other private corporations did, and the valuation of their capital stock was ascertained and the tax settlement made upon the same basis. This method of taxing the capital stock of these institutions (trust companies) continued in force until the act of 1907 was passed. As the trust company business grew in magnitude, as it did grow after the passage of the act of 1895 which conferred quasi banking privileges, the question of the proper method of taxing the capital stock of these corporations frequently arose. It was contended in their behalf that banks were their natural competitors; that their business partook of the nature of banking; and that they should be taxed in like manner. As a result of this feeling and the agitation which followed it the act of 1907 was passed. It is apparent that the legislature intended to tax trust companies on the same basis as banks. In this connection it will be helpful to consider the policy of the commonwealth in taxing bank stocks. * * *"

The method of taxing the stock of banks was finally provided in the Act of 1891 which provided an alternative [fol. 55] method whereby any bank or savings institution incorporated by this state or the federal government may collect from the shareholders and pay the state treasury a tax of eight mills on the par value of its shares in lieu of all taxation except upon its real estate, and upon failure to so elect to pay a tax upon the par value of the shares, it shall be subject to a tax of four mills upon the actual value of its shares of capital stock, without any exemption. Many inequalities developed in the administration of this act; nevertheless it was sustained by this court, by the Supreme Court of Pennsylvania (see 168 Pa. 109), and by the Supreme Court of the United States (167 U. S. 461), in which latter case it was said (p. 465):

"It is further insisted that the act is really one taxing the bank and *not taxing the shares of stock* as the property of the stockholders; but this is obviously a misinterpretation of the statute. That simply makes the bank the agent to collect from the stockholders the tax imposed upon the shares. The language of section 7 in this respect is clear, for it provides that the national bank which fails to elect to collect and pay the eight mills shall make a report to the auditor general 'setting forth the full number of shares of the capital stock issued by such national bank, and the actual value thereof, whereupon it shall be the duty of the auditor general to assess the same for taxation', * * *." (Italics are ours.)

We find similar provisions in the Act of 1907, and therefore we think it perfectly clear that under the Acts of 1885, 1889 and 1907 to the present time, the tax has been pro- [fol. 56] vided as assessable on the share of stock in the hands of the stockholders. Not one of the acts, since the tax was assessed on the shares, contained any provisions for collection, upon the failure to pay, out of the general funds of the bank or trust company.

Discussing the nature of a tax such as is provided in the Act of 1907 as amended, it was said by Mr. Justice Moody, writing the opinion of the Supreme Court of the United States in Home Savings Bank v. Des Moines, 205 U. S. 503, 51 Law Ed. 910, as follows:

"• • • The tax assessed to shareholders may be required by law to be paid in the first instance by the corporations themselves as the debt and in behalf of the shareholder, leaving to the corporation the right to reimbursement for the tax paid from their shareholders, either under some express statutory authority for their recovery or under the general principle of law that one who pays the debt of another at his request can recover the amount from him" (citing cases). *"The theory sustaining these cases is that the tax was not upon the corporations' holding of bonds, but on the shareholders' holdings of stock,* and an examination of them shows that in every case the tax was assessed *upon the property of the shareholders* and not upon the property of the corporation. • • •" (Italics are ours.)

It clearly appears, therefore, that a tax on shares is not a tax upon the capital stock, property or franchises of a corporation. It is in no sense a tax upon the corporation; [fol. 57] it is a personal levy on the shareholders based on their stock, without any intent to reach the property which gives the latter its value: Des Moines National Bank v. Fairweather, et al., 263 U. S.—103—syl. 4 and 5.

The Act of 1907 is a revenue statute and in the interpretation of its provisions this thought should be kept in mind.

"• • • Technical, or etymological, definitions of words are of little if any help in determining what the legislative language means in a revenue statute • • •. Some one must ascertain and fix the value of capital paid in, surplus and undivided profits in order to determine the value of the shares, otherwise there would be no basis for taxation. The report required to be filed by a trust company under the Act of 1907 is the first step taken, but it is only a means to an end, the end being to ascertain *the actual value of the shares* by the Auditor General, whose duty as an accounting officer requires him to make the settlement and collect the tax.";

per Elkin, J., in Commonwealth v. Union Trust Co. of Pittsburgh, 237 Pa. 353, 358. And in Dupuy v. Johns, et al., 261 Pa. 40, it was held:

"A tax on stock of foreign corporations, eo nomine, in the hands of resident shareholders, is not a tax on the

property represented by the capital of the corporation, but is a personal levy against the shareholder in question, [fol. 58] based on the value of his stock, without any intent to reach the property that gives the latter its value."

See also Callery's Appeal, 272 Pa. 255.

If this were a tax on the property of the corporation then why should the act provide that notice to shareholders should be given by posting of the notice of assessment in the company's place of business? We think this is done to the end of due process of law. It is further provided that the secretary of revenue shall give a hearing to any stockholder who wishes to protest the assessment made —see section 807 of the Fiscal Code, Act of April 9, 1929, P. L. 343. See also Commonwealth v. Hazelwood Savings & Trust Co., 271 Pa. 375, and Commonwealth v. Provident Trust Co., 287 Pa. 251, in which case it was said by Mr. Justice Kephart, writing the opinion of the Supreme Court (page 256), comparing the Emergency Profits Tax Act of 1923 with the Act of 1907, as follows:

"* * * The Act of 1907 and the Act of July 11, 1923, regulated the *taxing* of *shares of stock*, while the Act of June 28, 1923, dealt with a tax on net income. Therefore, as to the class of taxes on which the Act of 1907 operated, this appellant continued to be relieved from its payment under the Act of June 28, 1923. The exemption is thus seen to be continuous. That a reenacting statute which makes no changes in its substantive law should be construed as continuing the law as it existed before its passage, unless the legislative intent is manifestly to the contrary through irreconcilable inconsistencies with, or a particular reference [fol. 59] there made to, an intermediate statute, seems to be the rule deduced from the cases."

It thus clearly appears that the Act of 1907 and its amending acts constitute one piece of legislation upon the subject contained in the first act—in this instance the Act of 1907, as we have pointed out in the immediately preceding paragraphs.

Counsel for the defendant contends that a careful study of the taxing acts involved shows that this tax is not a tax on shares as shares. We are not able to follow this conclusion for the reasons heretofore given: Commonwealth v.

Provident Trust Company, supra. We find nothing in the Acts of 1907, 1923, 1927 or 1929, to support this contention. We find little change to the Act of 1907 in the Act of July 11, 1923, Act of 1927, or Act of 1929. The same thought is carried through all of said acts and therefore the language used by Mr. Justice Kephart in Commonwealth v. Provident Trust Co., supra, also applies to the instant case.

We refer now to the first three questions involved in this case which are: Must the United States securities, the Philippine Island bonds, and the Joint Stock Land Bank bonds be excluded in arriving at the actual value of the shares of the trust company subject to the tax?

In order to arrive at a sound conclusion with respect to these three questions we must consider how the value of the shares was ascertained by the taxing authorities.—See Stipulation of Facts.—In this calculation no deduction was [fol. 60] made for the value of the three items of federal securities above mentioned. It must be observed that this procedure was not an effort on the part of the taxing authorities to levy a tax upon these federal securities; the only purpose was to arrive at the value of the shares for we have heretofore determined that the tax imposed upon trust companies by the Act of 1929 was not a tax on personal property, nor a tax on the assets of the corporation, but a tax upon the shares held by the shareholders of said trust company. We are of opinion, therefore, that when the taxing officers of the Commonwealth of Pennsylvania refused to deduct the value of these federal securities from the total assets of the trust company they were acting strictly in accordance with the law as defined by the Supreme Court of the United States.

The attorney general, in support of the conclusion reached by the taxing officers, relies upon Van Allen v. The Assessors, 70 U. S. 573, 583; National Bank v. Commonwealth, 76 U. S. 553; Cleveland Trust Co. v. Lander, 184 U. S. 111, 46 Law Ed. 456; People's National Bank of Kingfisher, Okla. v. Board of Equalization of Kingfisher County, Okla., 67 Law Ed. (U. S.) 471; Des Moines National Bank v. Fairweather, 263 U. S. 103, 68 Law Ed. 191; Educational Films Corporation of America v. Ward, 282 U. S. 379, 390, 75 Law Ed. 400, 407; Pacific Co., Ltd. v. Johnson, 285 U. S. 480, 76 Law Ed. 893, 896; and Home Savings Bank v. Des Moines, 205 U. S. 503, 51 Law Ed. 901.

The leading case appears to be Van Allen v. The Assessors, supra. This case involved the question of the right on the part of the State of New York to tax shares in a national banking association created under the Act [fol. 61] of Congress of June 1864. The facts are fully set forth in a statement at the beginning of the cited case. The opinion was written by Mr. Justice Nelson beginning on page 581, from which we quote (p. 583-4):

"But, in addition to this view, the tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal; and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own. This is familiar law, and will be found in every work that may be opened on the subject of corporations. • • •

"The interest of the shareholder entitles him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of his shares; and, upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property, held by the shareholder like any other property that may belong to him. Now, it is this interest which the act of Congress has left subject to taxation by the States, under the limitations prescribed, as will be seen on referring to it.

• • • • • • •

"This is an answer to the argument that the *term,* as used here, means only the interest of the shareholder as representing the portion of the capital, if any, not invested in the bonds of the government, and that the State assessors must [fol. 62] institute an inquiry into the investment of the capital of the bank, and ascertain what portion is invested in these bonds, and make a discrimination in the assessment of the shares. If Congress had intended any such discrimination, it would have been an easy matter to have said so. Certainly, so grave and important a change in the use of this term, if so intended, would not have been left to judicial construction.

"Upon the whole, after the maturest consideration which we have been able to give to this case, we are satisfied that

the States possess the power to tax the whole of the interest of the shareholder in the shares held by him in these associations, within the limit prescribed by the act authorizing their organization. * * *"

In National Bank v. Commonwealth, supra, the question arose whether under the law of Kentucky a tax was imposed upon the shares of the bank or upon the capital of the bank, which was all invested in government bonds. The Kentucky act imposed a tax on bank stock in the sum of fifty cents on each share thereof, equal to $100 of stock therein owned by individuals, corporations or societies, Held:

"The statute of Kentucky * * * taxing bank stock, levies a tax on the shares of the stockholders, as distinguished from the capital of the bank invested in Federal securities."

Mr. Justice Miller, writing the opinion of the court—see page 359—said:

"* * * it has been established as the law governing this court that the property or interest of a stockholder in an [fol. 63] incorporated bank, commonly called a share, the shares in their aggregate totality being called sometimes the capital stock of the bank, is a different thing from the moneyed capital of the bank held and owned by the corporation. This capital may consist of cash, or of bills and notes discounted, or of real estate combined with these. The whole of it may be invested in bonds of the government, or in bonds of the States, or in bonds and mortgages. In whatever it may be invested it is owned by the bank as a corporate entity, and not by the stockholders. A tax upon this capital is a tax upon the bank, and we have held that when that capital was invested in the securities of the government it could not be taxed, nor could the corporation be taxed as the owner of such securities.

"On the other hand, we have held that the shareholders, or stockholders, by which is meant the same thing, may be taxed by the States on stock or shares so held by them, although all the capital of the bank be invested in Federal securities, provided the taxation does not violate the rule prescribed by the act of 1864.

* * * * * * *

"But it is strongly urged that it is to be deemed a tax on the capital of the bank, because the law requires the officers

of the bank to pay this tax on the shares of its stockholders. Whether the State has the right to do this we will presently consider, but the fact that it has attempted to do it does not prove that the tax is anything else than a *tax on these shares.* (Italics are ours.) It has been the practice of many of the [fol. 64] States for a long time to require of its corporations, thus to pay the tax levied on their shareholders. It is the common, if not the only, mode of doing this in all the New England States, and in several of them the portion of this tax which should properly go as the shareholder's contribution to local or municipal taxation is thus collected by the State of the bank and paid over to the local municipal authorities. In the case of shareholders not residing in the State, it is the only mode in which the State can reach their shares for taxation. We are, therefore, of opinion that the law of Kentucky is a tax upon the shares of the stockholder. If the State cannot require of the bank to pay the tax on the shares of its stock it must be because the Constitution of the United States, or some act of Congress, forbids it. There is certainly no express provision of the Constitution on the subject.

* * * * * * *

"* * * But we are of opinion that while Congress intended to limit State taxation to the shares of the bank, as distinguished from its capital, and to provide against a discrimination in taxing such bank shares unfavorable to them, as compared with the shares of other corporations, and with other moneyed capital, it did not intend to prescribe to the States the mode in which the tax should be collected. The mode under consideration is the one which Congress itself has adopted in collecting its tax on dividends, and on the income arising from bonds of corporations. It is the only mode which certainly and without loss, secures the payment of the tax on all the shares, resident or non-resident; and, [fol. 65] as we have already stated, it is the mode which experience has justified in the New England States as the most convenient and proper, in regard to the numerous wealthy corporations of those States. It is not to be readily inferred, therefore, that Congress intended to prohibit this mode of collecting a tax which they expressly permitted the States to levy."

In Cleveland Trust Co. v. Lander, supra, it was held (L. Ed. 456):

"A tax on the shares of stock in a trust company under the Ohio statutes is not equivalent to a tax on the property of the corporation, and therefore the shareholders are not entitled, under U. S. Rev. Stat. Section 3701, to have a deduction, from the value of the shares, of the amount of a capital stock of the company which is invested in United States bonds."

See opinion of Mr. Justice McKenna, p. 113, L. Ed. 458, citing with approval Van Allen v. The Assessors, supra. Referring to the constitution and laws of the State of Ohio it was said by Mr. Justice McKenna:

"* * * And the deduction is made 'that, in determining the value of such property for taxation, the trust company is entitled to deduct from its capital and surplus the value of the United States government bonds then owned by it.' In other words, the contention is that the tax on the shares being equivalent to a tax on the property of the trust company, there must be deducted from the value of the shares that portion of the capital of the company invested in the United States bonds.

[fol. 66] "The answer to the contention is obvious and may be brief. The contention destroys the separate individuality recognized, as we have seen, by this court, of the trust company and its shareholders, and seeks to nullify one provision of the Revised Statutes of the United States * * * between which there is no want of harmony. And what the constitution of the State of Ohio requires, or what the statutes of the State require as to taxation, must be left to be decided by the Supreme Court of the State, and whether that court has decided, logically or illogically, that a tax authorized by the laws of the United States on the shares of the company satisfied the constitution of the State as a tax on the corporation, is not open to our review or objection. The manner of taxation being legal under the statutes of the United States, its effect cannot be complained of in the Federal tribunals."

The case of Home Savings Bank v. Des Moines, supra, is so easily distinguishable as a tax upon the capital and not on the shares, that an extended reference to it is not necessary.

In Des Moines National Bank v. Fairweather, supra, it was held:

"The mere fact that the capital, surplus, and undivided earnings of a bank are made the measure of value of the shares for taxation, and that the bank is required primarily to pay the tax on the shares, does not show that the assessment is upon the property of the bank rather than upon the stockholders' shares.

[fol. 67] "The fact that, in fixing the value of shares of bank stock for purposes of taxation, the value of the capital, shares, and undivided earnings of the bank is made the basis, without deducting the value of United States securities or stock in Federal reserve banks held by the bank, does not constitute an illegal tax on such securities."

To the same effect see Pacific Co., Ltd. v. Johnson, State Treasurer, supra, in which it was said by Mr. Justice Stone, writing the opinion of the court, p. 489, L. Ed. 896:

"* * * State laws taxing shareholders of national banks on the full net value of their shares, although the banks own tax-exempt federal securities, have also been consistently upheld.";

citing Van Allen v. Assessors, supra, and other cases.

We think the cases to which reference has been made are not in conflict with MacMillan Co. v. Commonwealth of Massachusetts, 279 U. S. 620, 73 Law Ed. 874, as a careful reading of the case will clearly show. Nor are they in conflict with State of Missouri v. Gehner, 281 U. S. 313, 74 Law Ed. 870.

Governed by the authorities to which we have referred, and from which we have quoted, we are clearly of opinion that no error was committed in the instant case. The tax being clearly assessed upon the shareholders, the defendant is not entitled to any deduction for the United States securities, the Philippine Island bonds, and Joint Stock Land [fol. 68] Bank bonds owned by it, and the contention of the exceptant cannot be sustained.

The fourth question involves the proposition as to whether the defendant is entitled to a flat deduction for the actual value of 160 shares of American Telephone and Telegraph Company, and 200 shares of F. & W. Grand 6½s preferred, owned by the defendant, because these companies

are Pennsylvania corporations paying a capital stock tax. Involved in this question is whether the trust company paying a capital stock tax, is entitled to a flat deduction on the full investment in the shares of Pennsylvania corporations paying a capital stock tax, or only upon the proportion and to the extent that such Pennsylvania corporations have paid such tax.

The defendant relies upon the decision of the United States Supreme Court in the case of Missouri v. Gehrner, 281 U. S. 313, 321, 74 Law Ed. 870; the case of Commonwealth v. Mortgage Trust Co., 227 Pa. 163, and the decision of this court in Commonwealth v. Girard Trust Co., 3 Pa. D. & C. 722, 26 Dauphin County Reports 216, 114 Atl. 368.

In Missouri v. Gehrner, there was an appeal from the judgment of the Supreme Court of the State of Missouri on certiorari to review the action of the State Board of Equalization determining the amount of taxable property of an insurance company owning bonds of the United States. Section 6386 of the Revised Statutes of the State of Missouri provides:

[fol. 69] "The property of all insurance companies organized under the laws of this state shall be subject to taxation for state, county, municipal and school purposes, as provided in the general revenue laws of this state in regard to taxation and assessment of insurance companies. Every such company or association shall make returns, subject to the provisions of said laws: First, of all the real estate held or controlled by it; second, of the net value of all its other assets or values in excess of the legally required reserve necessary to reinsure its outstanding risks and of any unpaid policy claims, which net values shall be assessed and taxed as the property of individuals. * * *"

Included in the returns made by the insurance company was $94,000 in United States bonds. The board of equalization declined to accept the return and after hearing the parties held that the bonds of the United States are not taxable, that section 6386 contravenes provisions of the state Constitution requiring uniform taxation and that therefore the company was not entitled to deduct the amount of such reserve and claims. The board assessed the company's taxable property at $50,000 without disclosing how it arrived at the amount. The Supreme Court of Missouri held the

action of the board valid; found the company's liabilities were chargeable against all its assets—taxable and nontaxable alike—declared that such reserve and claims should be apportioned between the two classes of assets according to their respective amounts. The board of equalization completely eliminated the bonds from its calculations, and there [fol. 70] is nothing in the language of the section to suggest that it authorizes any diminution of the amount of the deductible reserve and unpaid claims or an apportionment of such liabilities between taxable and non taxable assets. The Supreme Court of the United States held:

"The section discloses a purpose as a general rule to omit from taxation sufficient assets of the insurance companies to cover their legal reserve and unpaid policy claims. It would be competent for the state to permit a less reduction or none at all. But where, as in this case, the ownership of United States bonds is made the basis of denying the full exemption which is accorded to those who own no such bonds, this amounts to an infringement of the guaranteed freedom from taxation. It is clear that the value of appellant's government bonds was not disregarded in making up the estimate of taxable net values. That is in violation of the established rule. * * *";

and the judgment was reversed.

In a former part of this opinion we held that this is a tax on shares of stock and not upon the property of the defendant, therefore the Missouri case cannot apply; and a careful reading of this decision discloses that it does not support the contention of the defendant.

Nor do we think the case of Commonwealth v. Mortgage Trust Co., supra, supports defendant's contention. It appears from the opinion of Mr. Justice Elkin, p. 176, that ever since the passage of the Act of 1897 the method of fix- [fol. 71] ing the tax on trust companies has been followed by the Act of 1907 and its amendments which consists, as Judge Elkin points out, of—

"a definite method of ascertaining the actual value of each share was provided, which method consisted in adding together the amount of capital paid in, the surplus and undivided profits and dividing the amount so ascertained by the number of shares. * * * The constitutional mandate only requires taxes to be uniform upon the same class of

subjects. * * * This power was exercised in 1907 by making trust companies a class for the purpose of taxation, and a uniform tax rate and method of ascertaining taxable value applicable to the entire class were provided in that act" (p. 177, 178).

We have discussed the cited case at length in a former part of this opinion and are not convinced that it supports the contention of the defendant.

In the Dauphin County case of Commonwealth v. Girard Trust Co., supra, President Judge Hargest draws this distinction:

"2. There is a plain distinction between the capital stock of a corporation as a whole in the hands of the corporation and the individual shares of the shareholder in his hands: Lycoming County v. Gamble, 47 Pa. 106; Whitesell v. Northampton County, 49 Pa. 526.

"3. There is no such identity between the property and assets of a corporation and its capital stock which requires [fol. 72] the capital stock to be exempted from taxation in the same proportion that the property is exempt: Com. v. Shenango Furnace Co., 268 Pa. 286.

"4. The shares of the capital stock of a corporation are personal property taxable in the hands of the holder unless exempted by law: Callery's Appeal, 272 Pa. 255."

What this court had before it, as we understand the Girard Trust Co. case, was whether the Pennsylvania Railroad Company, which only paid a state tax on 80% of the valuation of its capital stock, was taxable in Pennsylvania on the balance of 20% and we concluded it was.

It is claimed by the commonwealth, however, that the defendant did not prove that it had purchased the stocks in question out of the capital paid in, surplus and undivided profits, and therefore it can claim no deduction therefor under any theory which it may advance. As authority for this contention the commonwealth relies upon Commonwealth v. Hazelwood Savings & Trust Co., 271 Pa. 375, which was in affirmance of the same case reported in 23 Dauphin 244, in which it was held:

"Under the Act of June 13, 1907, P. L. 640, which declares that the value of the capital stock of a corporation shall be ascertained for tax purposes 'by adding together so much of the capital stock paid in, the surplus and undivided profit, as is not invested in shares of stock of corporations' liable to pay a capital stock tax, and dividing this [fol. 73] amount by the number of shares, that which is to be deducted is not all the nontaxable assets held by the company, but only so much thereof as was purchased out of the capital stock paid in, the surplus and undivided profits.

"Although a company may purchase its nontaxable securities from any fund it chooses, yet if it fails to prove purchase of such securities out of capital stock account, the Commonwealth may apportion the value of the securities between 'the capital stock paid in, the surplus and undivided profits' and the other assets of the company, it appearing as far as shown that the price of the securities came from both funds."

Writing the opinion of the Supreme Court it was held by Chief Justice Moschzisker (p. 377):

"The Act of 1907 declares that the value of each share of capital stock 'shall be ascertained and fixed by adding together so much of the capital stock paid in, the surplus and undivided profits, as is not invested in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or tax on shares, and dividing this amount by the number of shares.' This language is neither doubtful nor uncertain; that which is to be deducted is not all the nontaxable assets held by the company, but only 'so much (thereof as was purchased out) of the capital stock paid in, the surplus and undivided profits.'

"The company claims it has the right to purchase its securities from any fund it chooses, and this is correct. If it had purchased the nontaxable securities referred to, [fol. 74] form a fund composed solely of 'the capital stock paid in, the surplus and undivided profits,' of course the whole value thereof should be deducted; just as, if it had paid therefor wholly out of its other assets, no part of this value would be deductible. Since the company did not prove its purchase of these securities out of capital stock account, the Commonwealth might, perhaps, have refused to allow any deduction whatever, but, instead of doing this,

it adopted the more equitable course of apportioning the value of the nontaxable securities between the two funds, because, so far as shown, the price of them came from both. No statute, authority or principle has been cited questioning the right to do this; and, the result reached being equitable, the trust company lacks just ground of complaint."

We have made a very careful examination and find the Hazelwood Savings & Trust Co. case has not been reversed or reconsidered by the Supreme Court of Pennsylvania.

The defendant did not prove that it had purchased these stocks out of capital paid in, surplus and undivided profits. It may have been very difficult or impossible for the defendant to unscramble depositor's money from the capital stock account and show from which the stock was purchased. This, however, is entirely a matter for the defendant. The defendant not having proven its purchase of these stocks out of capital, surplus, and undivided profits, the Commonwealth might have refused to allow any deduction whatever, but instead it pursued the more equitable course, [fol. 75] as was also done in the Hazelwood Savings & Trust Co. case, supra.

The procedure pursued by the taxing officers with respect to the stock owned by the defendant is detailed very fully in paragraph 1 of the Statement of Facts. There is no dispute about the first two items of the formula. Item $41,667 represents the amount of capital stock paid in, plus the surplus and the undivided profits. The sum of $25,247 represents the appreciation added thereto. From this was deducted the result of the minor fraction, which minor fraction was used to get the proportionate amount to be deducted because of the ownership of stock in other corporations, heretofore referred to. In doing this, the taxing officers pursued the same method identically which was determined to be proper by this court in Com. v. Girard Trust Co., supra.

The Act of 1907, as amended, not only allows a deduction for ownership in shares of stock of corporations liable to pay a capital stock tax or relieved from the payment of capital stock tax, but also to those liable to pay tax on shares. However, only to the extent to which tax on shares had been paid to Pennsylvania is there to be an allowance. No allowance need be made in the case of the ownership of these shares any more than for the ownership of

any other shares, as previously discussed, unless it is proven by the defendant that the shares are purchased out of capital paid in, surplus, and undivided profits. Com. v. Hazelwood Savings & Trust Co., supra.

The same rule was applied by the taxing officers in mak- [fol. 76] ing their determination for deduction purposes in the matter of the 160 shares of the American Telephone & Telegraph, in which it was found, as explained at the bottom of page 2 and top of page 3 of the Statement of Facts, that the taxable value of each share of stock of this company for Pennsylvania capital stock tax was 4 mills, and therefore on 160 shares owned by the defendant, the taxable value for capital stock tax purposes was 64¢. Because this sum was less than a dollar, as agreed in the Statement of Facts, the taxing officers did not use it at all in making up the totals, which totals amounted to $71,373, the multiplicand in the taxing fraction.

Briefly considered, the defendant claims that the method set up by the Act of 1907, whereby the value of the shares was to be ascertained by adding together the amount of the capital stock paid in, the surplus and undivided profits, and dividing the same by the number of shares, was the proper method; that when the Legislature in 1923 amended the Act of 1907 by providing that the value of the shares should be ascertained by adding together "so much of the amount of the capital stock paid in, the surplus and undivided profits, as is not invested in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax or tax on shares, and dividing this amount by the number of shares," it set up an invalid method and the Act no longer provided for a tax on shares in the hands of the shareholders; and it further contends, when the Legislature in 1927 further amended the Act of 1907 by adding the words "or relieved from the payment of capital stock tax" following the words "liable to pay to the Commonwealth a capital [fol. 77] stock tax," in the amendment of 1923, it provided for the deduction for shares owned in Pennsylvania corporations in the same manner as the Personal Property Tax Act of June 17, 1913, P. L. 507, and relies in support of its contentions upon Dupuy v. Johns, 261 Pa. 40.

The case of Dupuy v. Johns was in interpretation of the Personal Property Tax Act of June 17, 1913, and we had it under consideration in a former part of this opinion. In

this case the plaintiff, a resident of Pittsburgh, failed to include in his personal property tax return shares owned by him in the Crucible Steel Company of New Jersey. The company had capital stock of seventy-five million, fourteen million of which was employed in Pennsylvania, and all except $29,000 in manufacturing. The company paid a capital stock tax in Pennsylvania only on $29,000. The plaintiff brought a bill to restrain the collection of the assessment against him of 61/75 of the value of the stock, being the proportionate part of the stock which represented property outside of Pennsylvania, claiming that his shares were fully exempt under section 1 of the Act of 1913, P. L. 507. The Supreme Court sustained this contention; it held that in the case of personal property tax where the foreign corporation was liable for any capital stock tax, or was relieved from capital stock tax or tax on shares, the entire shares owned by the individual were exempt. We think this case has no application to the instant case where we are dealing with the ownership of shares of stock by a trust company under a method of classification for taxation purposes expressly provided for trust companies by the Act of 1907, as amended.

We are not able to follow the contention of the defendant that the amendments to the Act of 1907 by the Acts [fol. 78] of 1923 and 1927 changed the nature of the tax from a tax on shares to a capital stock tax and that the bank would therefore be entitled to a full deduction for shares owned. That contention is clearly established to be erroneous by the decisions in Com. v. Mortgage Trust Co., supra, Com. v. Union Trust Co., supra, and Com. v. Girard Trust Co., supra, where Judge Hargest had the case of Dupuy v. Johns under consideration, and stated that the learned justice who wrote the opinion in Dupuy v. Johns "stated that it is by no means unique or unprecedented in our tax system to relieve the holder of stock to the full amount of the value of the shares, and illustrated this proposition by saying that 'shareholders of the Pennsylvania Railroad, for example, are relieved from individual taxation on the stock of that company, because the corporation itself pays a State tax on capital' ", to which Judge Hargest replies:

"This, however, is not the policy or the practice with reference to trust companies. Trust companies are only re-

lieved from taxation in the proportion that a capital stock tax has been paid upon the shares of stock held by them. The Auditor General's Department has construed the language of the Act of 1907, relieving trust companies on so much of their capital, surplus and undivided profits 'as is not invested in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax or tax on shares,' and has determined that—to use the stock of the Pennsylvania Railroad as an example—where the Pennsylvania Railroad pays only 80 per cent. tax on the value of its shares, the 20 per cent. invested in those shares 'is not in- [fol. 79] vested in shares of stock of corporations liable to pay' a capital stock tax. * * *"

He therefore concluded (26 Dauphin p. 225):

"If there were no difference between the exemption allowed to an individual and the exemption allowed to a trust company on holdings of the shares of corporations, and no difference whether the holdings were in foreign or domestic corporations, it would be very difficult to distinguish the case of Dupuy v. Johns from the case before us. * * *"

This last sentence is the straw upon which most of the contention of the defendant in this case has been built. Because of the fact that the Legislature in the amendment of 1927 inserted the words "or relieved from the payment of capital stock tax" following the words "liable to pay to the commonwealth a capital stock tax", it is contended that the amendments to the Act of 1907 are similar to the exemption provision of the Act of 1913, and therefore Dupuy v. Johns should apply. Judge Hargest himself stated the answer to his own statement just quoted when he immediately said (26 Dauphin p. 225):

"But we have just pointed out that the language of the Trust Company Act of 1907 requires such companies to pay a tax on such of its holdings 'as is not invested in the shares of stock of corporations liable to pay a capital stock tax.' In the application of the principle that where the taxpayer or his property is within the general language of the statute imposing the tax the exempting provision should be [fol. 80] strictly construed, there are strong reasons for holding that trust companies are not exempt from investments in the shares of corporations to the extent that those

corporations have not paid a capital stock tax. The exemption contained in the personal property act is quite different. It provides 'that shares of stock of a corporation are liable to tax except shares of stock * * * that may be liable to a tax on its shares or its capital stock for State purposes * * * or relieved from the payment of a tax on its shares or capital stock for State purposes by the laws of this Commonwealth.' ''

It will be observed therefore that the Act of 1913 excepts certain shares and sets up a new class, according to Dupuy v. Johns, supra, granting full exemption on shares of stock liable to pay a tax on its shares or its capital stock, etc., on the ground that it is not intended under the Personal Property Tax Act that a share shall be divisible. But with respect to trust companies "the Legislature", as Mr. Justice Elkin said in the Mortgage Trust Company case, "in 1907, made a new class of taxable subjects and provided in express terms a definite method of determining the actual value of the shares of stock belonging to this taxable class." By the addition of the words "so much of the amount of capital stock paid in, the surplus, and undivided profits as is not invested in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of capital stock tax or tax on shares," it has been determined that the shares are divisible, and that the trust company is only entitled to a deduc- [fol. 81] tion for shares owned by it in other corporations to the extent that a capital stock tax has been paid: Com. v. Girard Trust Co., supra.

For the reasons herein expressed we are not able to follow the contention of the defendant. For further authority see Callery's Appeal, 272 Pa. 255, 266, where it was said by Mr. Justice Kephart, referring to the Personal Property Tax Act of 1913, as follows:

"Though such intrinsic value of shares may be out of the state * * * shares of a corporation held by a domestic corporation are not taxed under a personal property tax."

It is further contended by counsel for the defendant that the sum of $71,373 in the taxing fraction was not the value of exempt and nontaxable shares of stock owned by the

defendant. This sum of $71,373 represents the value of shares of stock owned by the trust company upon which a tax has been paid. If all of the shares of stock of other corporations owned by the trust company were purchased out of capital stock, surplus and undivided profits, the defendant trust company would be entitled to deduction only to the extent that tax has already been paid upon such shares, and would not be entitled to deduction on basis of market value of $155,989: Com. v. Girard Trust Co., supra. But, what stocks of other corporations owned by the trust company have been proved to have been purchased out of capital stock, surplus and undivided profits? In other words, the trust company is not entitled to any deduction for shares of stock owned unless it can prove that said [fol. 82] shares were purchased out of and are represented by capital stock, surplus and undivided profits. However, the taxing officers, as we have heretofore stated, did not stand on this technical ground, but pro-rated capital stock, surplus and undivided profits, to total assets, and applied this apportionment to $71,373. The trust company did not prove that it was entitled to any deduction. The taxing officers allowed an equitable deduction of $8,886, under an apportionment theory approved by the Supreme Court of Pennsylvania in the Hazelwood Savings & Trust Co. case. It therefore appears that the trust company was given a deduction for a portion of the capital stock, surplus and undivided profits when it did not prove that it was entitled to any deduction.

It is claimed by the defendant that by the amendment of 1923 there is a discrimination against the United States securities, Philippine Island bonds, and Joint Stock Land Bank bonds, owned by the defendant. We are of opinion this this contention is not sound. There is no discrimination against other assets of the trust company when the trust company act and its amendments provide for deduction of that portion of capital stock, surplus, and undivided profits invested in shares of corporations liable to pay or relieved from payment of capital stock tax to the commonwealth. The sole purpose of this exemption clause was to avoid double taxation. It is a well established policy in Pennsylvania not to impose a tax upon both the capital stock of an ordinary corporation, and upon the shares of stock in the hands of the shareholders; nor upon both the assets and property of a trust company, and upon the

shares of stock of the trust company in the hands of share-[fol. 83] holders. It is the policy of the commonwealth to tax one or the other—in the case of ordinary or industrial corporations, the capital stock of the company; in the case of trust companies, the shares of the trust company in the hands of the shareholders. With this well established policy in mind we fail to discover any discrimination on the part of the taxing officers.

In conclusion, the last objection in the specification of objections filed in this case, it is claimed that if the tax in question is a tax on shares, then the 166 shares of stock of the defendant owned by non-residents are not subject to the tax. In the Stipulation of Facts it is agreed that 166 shares of defendant's stock are owned by non-residents of Pennsylvania.

The Act of 1907 as last amended by the Act of 1929 P. L. 673, requires every insurance or trust company incorporated in Pennsylvania under the provisions of the Acts therein referred to, to report on or before a certain date to the Department of Revenue setting forth *"the full number of shares of the capital stock subscribed for or issued by such company"*. Having made this report it became the duty of the Department of Revenue to assess *"such shares* for taxation at the rate of five mills upon each dollar of the actual value of *each share of stock"* to be ascertained as provided in the act. We quote also from a part of section 1 which provides: "That upon the payment of the tax fixed by this Act into the State Treasury, through the Department of Revenue, the *shares* • • • shall be exempt from all other taxation under the laws of this Commonwealth." We think this clearly imposes a tax on all of the shares of the stock of trust companies in the hands [fol. 84] of the stockholders, whether they are resident or non-resident. We have discussed this matter in a former part of this opinion which discussion need not be repeated here.

In Corry v. City of Baltimore, 196 U. S. 466, 474, it was held:

"That it was rightly determined that it was within the power of the state to fix, for the purposes of taxation, the situs of stock in a domestic corporation, whether held by residents or non-residents, is so conclusively settled by the prior adjudications of this court that the subject is not

open for discussion. Indeed, it was conceded in the argument at bar that no question was made on this subject."

We think we have discussed all of the questions involved in this appeal and our conclusions thereon are supported by ample authority in the opinions of the Supreme Court of the United States, the Supreme Court of Pennsylvania, and this court. We are of opinion, therefore, that the objections filed by the defendant to the settlement of the tax on the shares of stock of the Schuylkill Trust Company must be overruled and dismissed.

Governed by the authorities to which we have referred we have reached the following—

Conclusions of Law

1. The tax imposed by the Act of June 13, 1907, P. L. 640, as amended by the Act of April 25, 1929, P. L. 673, [fol. 85] is a tax upon the shareholders' holding of stock.

2. The tax imposed upon trust companies by the Act of 1907 as amended is not a tax on personal property nor a tax on the assets of the trust company but a tax upon the shares held by the shareholders of such trust company.

3. The tax being clearly assessed upon the shares of capital stock in the hands of its shareholders, the defendant is not entitled to any deduction for the United States securities, the Philippine Island bonds, and Joint Stock ~~Land~~ Bank bonds owned by it.

4. There is a plain distinction between the capital stock of a corporation as held in the hands of the corporation and the individual shares of the shareholder in his hands.

5. Although a company may purchase its non-taxable securities from any fund it chooses yet if it fail to prove purchase of such securities out of the capital stock account the commonwealth may apportion the value of the securities between "the capital stock paid in, the surplus, and undivided profits" and the other assets of the company.

6. In the Act of 1907 the Legislature made a new class of taxable subjects and provided in express terms a definite method of determining the actual value of the shares of stock belonging to this taxable class.

[fol. 86] 7. Under the Act of 1907 as amended there is no discrimination against other assets of the company when the trust company act and its amendments provide for deduction of that portion of the capital stock, surplus, and undivided profits invested in the shares of corporations liable to pay or relieved from payment of capital stock tax to the commonwealth. The sole purpose of this exemption clause was to avoid double taxation.

8. The Act of 1907 as amended imposes a tax on all the shares of the stock of trust companies in the hands of the stockholders whether they are resident or non-resident.

Statement

Amount of tax	$2290.14
Payment on account	570.43
Balance due Commonwealth	$1719.71
Interest from April 8, 1933, being 60 days after date of settlement	54.74
Total	$1774.45
Attorney General's Commission of 5%	88.72
Amount now due	$1863.17

[fol. 87] JUDGMENT

And now, October 19, 1933, judgment is hereby directed to be entered in favor of the Commonwealth and against Schuylkill Trust Company for the sum of $1863.17, unless exceptions be filed within the time limited by law.

Frank B. Wickersham, A. L. Judge, for the Court en Banc.

IN COURT OF COMMON PLEAS

EXCEPTIONS OF THE SCHUYLKILL TRUST COMPANY, DEFENDDNT

And Now, November 16, 1933, the Schuylkill Trust Company, defendant above named, by its attorney, John Robert Jones, excepts to the conclusions of law, the rulings on re-

quests for conclusions of law and the judgment directed to be entered by the learned court and specifies the following exceptions thereto:

1. The learned court erred in its answer to the defendant's 3rd Request for Conclusions of Law which Request and answer of the court thereto read as follows:

Request:

"3. Shares of stock are intangible personal property, a tax imposed upon them is a personal property tax and their situs for taxation is the domicile of their owner, hence shares [fol. 88] of stock owned by non-residents of Pennsylvania are not subject to tax except in the case of shares of stock issued by national banks located in the State, the authority to tax which national bank shares owned by non-residents and residents of the State being given by United States Revised Statutes, Section 5219."

Answer of the court: "Refused."

2. The learned court erred in its answer to the defendant's 4th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"4. The tax imposed by the Act of April 25, 1929, P. L. 673, is not a tax upon the stockholders' interest in the shares. Under the method provided in the said act to determine the value to which the rate of tax is directed to be applied there is a diminution from the amount of capital stock paid in, surplus and undivided profits of the trust company by reason and on account of the kind of assets which constitute the property and capital stock of the trust company."

Answer of the court: "Refused."

3. The learned court erred in its answer to the defendant's 5th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

[fol. 89] Request:

"5. The tax imposed by the Act of April 25, 1929, P. L. 673, is not a tax upon the stockholders' interest in the shares, for the reason that though the interest of the stock-

holder be the same in the case of two or more trust companies, the tax is not the same in each such case, the difference in taxable value and consequent difference in tax being caused by the amount and value of the assets owned by each trust company which are exempted under the provisions of the act."

Answer of the court: "Refused."

4. The learned court erred in its answer to the defendant's 6th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"6. The tax imposed by the Act of April 25, 1929, P. L. 673, is not imposed upon the shareholders' interest but upon assets owned by the trust company, the taxable value of which is determined by deducting and eliminating from consideration the full value of the assets which are exempted by the said act and assets which the state has no jurisdiction to tax."

Answer of the court: "Refused as stated."

5. The learned court erred in its answer to the defendant's 7th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

[fol. 90] Request:

"7. The amount of capital stock paid in, the surplus and undivided profits of the trust company being the difference between the value of the total assets and the amount of assets sufficient to cover liabilities to others than stockholders, it is required by the Act of April 25, 1929, P. L. 673, that in determining the taxable value to which the rate of tax is directed to be applied, assets in an amount sufficient to cover liabilities to others than stockholders be deducted from the value of the total assets of the defendant trust company."

Answer of the court: "Refused as stated."

6. The learned court erred in its answer to the defendant's 8th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"8. In determining the taxable value to which the rate of tax is to be applied under the Act of April 25, 1929, P. L. 673, the trust company must be regarded as though it did not own the assets which are declared by the act to be exempt and therefore shares of stock issued by corporations 'liable to pay to the Commonwealth a capital stock tax or relieved from the payment of capital stock tax or tax on shares' must be deducted at their full value from the value of the total assets of the defendant trust company."

Answer of the court: "Refused."

[fol. 91] 7. The learned court erred in its answer to the defendant's 9th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"9. In determining the taxable value to which the rate of tax is to be applied under the Act of April 25, 1929, P. L. 673, the trust company must be regarded as though it did not own the assets which are non-taxable such as United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds, therefore such securities and bonds must be deducted at their full value from the value of the total assets of the defendant trust company."

Answer of the court: "Refused."

8. The learned court erred in its answer to the defendant's 10th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"10. Assets owned by the defendant trust company consisting of shares of stock issued by national banks being subject to tax at their actual net asset value under the Act of July 15, 1897, P. L. 292, as amended, against their owner, the defendant, such national bank shares cannot be made the basis directly or indirectly, of other or further taxation and therefore in determining the taxable value to which the [fol. 92] rate of tax is directed to be applied under the Act of April 25, 1929, P. L. 673, such shares must be deducted at their full value from the value of the net assets, that is,

from the sum of the amount of capital stock paid in, surplus and undivided profits of their owner, the defendant."

Answer of the court: "Refused."

9. The learned court erred in its answer to the defendant's 11th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"11. Since under and by the provisions of the Act of April 25, 1929, P. L. 673, the value of the assets to which the rate of tax is directed to be applied is determined by an express deduction, elimination and exemption of shares of stock issued by corporations 'liable to pay to the Commonwealth a capital stock tax or relieved from the payment of capital stock tax or tax on shares,' and since under the said act as construed and applied by the Commonwealth and the resettlement of tax made against this defendant under the alleged authority of the said act there is no deduction, elimination or exemption of United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds owned by this defendant of the value of $151,207, the said Act of April 25, 1929, P. L. 673, as construed by the taxing officials of the Commonwealth and the resettlement of tax made against this defendant under the alleged authority of [fol. 93] the said Act of Assembly discriminate in favor of the said described shares of stock exempted under the provisions of the said act and against the said United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds."

Answer of the court: "Refused."

10. The learned court erred in its answer to the defendant's 12th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"12. Under the provisions of the Act of April 25, 1929, P. L. 673, as construed by the taxing officials of the Commonwealth in the said resettlement of tax made against this defendant, tax is imposed upon the United States securities,

Philippine Islands bonds and Joint Stock Land Bank bonds of the total value of $151,207."

Answer of the court: "Refused."

11. The learned court erred in its answer to the defendant's 13th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"13. The Act of April 25, 1929, P. L. 673, as construed and applied by the Commonwealth to this defendant and the [fol. 94] resettlement of tax made against the defendant impose a tax upon United States bonds and securities of the market value of $134,907, impose a tax upon instrumentalities of the United States Government, violate Section 3701 Revised Statutes, 31 U. S. C., Section 742, and are a violation of Clause 2 of Section 8 of Article I of the Constitution of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that 'All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;' and the 14th Amendment to the Constitution of the United States by depriving the defendant of its property without due process of law and denying to it the equal protection of the laws."

Answer of the court: Refused."

12. The learned court erred in its answer to the defendant's 14th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"14. The Act of April 25, 1929, P. L. 673, as construed and applied by the Commonwealth to this defendant and the resettlement of tax made against the defendant impose a tax upon Philippine Islands 5½% Public Improvement Loan due Aug. 1, 1941, Act of Philippine Legislature Number 2940, bonds, of the market value of $10,900, violate the provisions of the Act of Congress of August 26, 1916, Act [fol. 95] of Congress of July 21, 1921 and Act of the Philippine Legislature Number 2940 approved February 5, 1921, the Act of Congress of February 6, 1905, chap. 453, Vol. 33, U. S. Statutes at Large, part 1, page 689, and are a viola-

tion of Section 8 of Article I of the Constitution of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that 'All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;' and the 14th Amendment to the Constitution of the United States by depriving the defendant of its property without due process of law and denying to it the equal protection of the laws."

Answer of the court: "Refused."

13. The learned court erred in its answer to the defendant's 15th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"15. The Act of April 25, 1929, P. L. 673, as construed and applied by the Commonwealth to the defendant and the resettlement of tax made against the defendant impose a tax upon Joint Stock Land Bank bonds of the market value of $5,400 impose a tax upon instrumentalities of the United States Government, violate the provisions of 'The Federal Farm Loan Act' of the United State- Congress of July 17, [fol. 96] 1916 (Chap. 245, 39 U. S. Statutes at Large, p. 360 et seq. Sec. 16) and are a violation of Section 8 of Article I of the Constitution of the United States, Section 1 of Article IX of the Constitution of Pennsylvania which requires that 'All taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws'; and the 14th Amendment to the Constitution of the United States by depriving the defendant of its property without due process of law and denying to it the equal protection of the laws."

Answer of the court: "Refused."

14. The learned court erred in its answer to the defendant's 16th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"16. The Act of April 25, 1929, P. L. 673, as construed and applied by the Commonwealth to this defendant and

the resettlement of tax made against the defendant wherein Philadelphia National Bank shares of the value of $20,202 were not deducted from the value of the net assets of the defendant and not eliminated entirely from consideration in determining the taxable value to which the rate of tax was applied discriminate against and impose a tax upon the said shares of stock and violate the provisions of Section 5219 of the Revised Statutes of the United States. Such shares of stock being subject to tax under the Act of [fol. 97] July 15, 1897, P. L. 292, as amended, against their owner, they cannot be made the basis, directly or indirectly, of any other or further taxation."

Answer of the court: "Refused."

15. The learned court erred in its answer to the defendant's 17th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"17. The Commonwealth being required by the provisions of Section 5219 of the Revised Statutes of the United States to deduct the value of the Philadelphia National Bank shares owned by the defendant from the value of the net assets, that is, from the amount of capital stock paid in, surplus and undivided profits, is required in order to preserve uniformity of taxation to make a similar deduction of all of the exempt assets of the defendant of the total value of $155,989 consisting of 'shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of capital stock tax or tax on shares,' and by its failure to make such deduction the Act of April 25, 1929, P. L. 673, as construed and applied by the Commonwealth to this defendant and the resettlement of tax made against the defendant violate Section 1, Article IX of the Constitution of Pennsylvania which requires that 'All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority [fol. 98] levying the tax, and shall be levied and collected under general laws;' and the 14th Amendment to the Constitution of the United States by depriving the defendant of its property without due process of law and denying to it the equal protection of the laws."

Answer of the court: "Refused."

16. The learned court erred in its answer to the defendant's 18th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"18. The tax imposed by the Act of April 25, 1929, P. L. 673, should have been settled against this defendant trust company upon a taxable value determined by deducting from the value of the total assets in the amount of $3,755,882. (1) assets sufficient to cover liabilities to others than stockholders in the amount of $3,334,599.93 (2) the full value of the exempt shares of stock described in the act, including the value of the Philadelphia National Bank shares, in the amount of $155,989 and (3) the value of United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds in the amount of $151,207, thereby leaving a taxable value in the amount of $114,086.07, tax upon which at the rate of five mills is $570.43."

Answer of the court: "Refused."

[fol. 99] 17. The learned court erred in its answer to the defendant's 19th Request for Conclusions of Law, which Request and answer of the court thereto read as follows:

Request:

"19. The defendant having paid tax to the Commonwealth in the amount of $570.43, no tax is owing to the Commonwealth and judgment should be entered in favor of the defendant with costs."

Answer of the court: "Refused."

18. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"* * *; the method used in arriving at the tax is not objected to; and the only question is whether or not the accounting officers have included as taxable certain shares and securities which the defendant claims are exempt, and whether the tax involved is a tax on shares or a tax on personal property."

19. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"* * * the Act of 1907 and its amending acts constitute one piece of legislation upon the subject contained in the first act—in this instance the Act of 1907, * * *"

20. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

[fol. 100] "It must be observed that this procedure was not an effort on the part of the taxing authorities to levy a tax upon these federal securities; the only purpose was to arrive at the value of the shares for we have heretofore determined that the tax imposed upon trust companies by the Act of 1929 was not a tax on personal property, nor a tax on the assets of the corporation, but a tax upon the shares held by the shareholders of said trust company. We are of opinion, therefore, that when the taxing officers of the Commonwealth of Pennsylvania refused to deduct the value of these federal securities from the total assets of the trust company they were acting strictly in accordance with the law as defined by the Supreme Court of the United States."

21. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"* * *, we are clearly of opinion that no error was committed in the instant case. The tax being clearly assessed upon the shareholders, the defendant is not entitled to any deduction for the United States securities, the Philippine Island bonds, and Joint Stock Land Bank bonds owned by it, and the contention of the exceptant cannot be sustained."

22. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"The Act of 1907, as amended, * * * allows a deduction * * *, only to the extent to which tax on shares has been paid to Pennsylvania. * * * No allowance [fol. 101] need be made in the case of the ownership of these shares any more than for the ownership of any other shares, as previously discussed, unless it is proven by the defendant that the shares are purchased out of capital paid in, surplus, and undivided profits: * * *"

23. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"By the addition of the words 'so much of the amount of capital stock paid in, the surplus, and undivided profits as is not invested in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved

from the payment of capital stock tax or tax on shares,' it has been determined that the shares are divisible, and that the trust company is only entitled to a deduction for shares owned by it in other corporations to the extent that a capital stock tax has been paid: * * *"

24. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"* * *, the trust company is not entitled to any deduction for shares of stock owned unless it can prove that said shares were purchased out of and are represented by capital stock, surplus and undivided profits."

25. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"There is no discrimination against other assets of the [fol. 102] trust company when the trust company act and its amendments provide for deduction of that portion of capital stock, surplus, and undivided profits invested in shares of corporations liable to pay or relieved from payment of capital stock tax to the commonwealth."

26. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"The Act of 1907 as last amended by the Act of 1929, P. L. 673, * * * clearly imposes a tax on all of the shares of the stock of trust companies in the hands of the stockholders, whether they are resident or non-resident."

27. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"* * * We are of opinion, therefore, that the objections filed by the defendant to the settlement of the tax on the shares of stock of the Schuylkill Trust Company must be overruled and dismissed."

28. The learned court erred in its 1st Conclusion of Law which reads as follows:

"1. The tax imposed by the Act of June 13, 1907, P. L. 640, as amended by the Act of April 25, 1929, P. L. 673, is a tax upon the shareholders' holding of stock."

29. The learned court erred in its 2nd Conclusion of Law which reads as follows:

[fol. 103] "2. The tax imposed upon trust companies by the Act of 1907 as amended is not a tax on personal property nor a tax on the assets of the trust company but a tax upon shares held by the shareholders of such trust company.'

30. The learned court erred in its 3rd Conclusion of Law which reads as follows:

"3. The tax being clearly assessed upon the shares of capital stock in the hands of its shareholders, the defendant is not entitled to any deduction for the United States securities, the Philippine Island bonds, and Joint Stock Land Bank bonds owned by it."

31. The learned court erred in its 5th Conclusion of Law which reads as follows:

"5. Although a company may purchase its nontaxable securities from any fund it chooses yet if it fail to prove purchase of such securities out of the capital stock account the commonwealth may apportion the value of the securities between 'the capital stock paid in, the surplus, and undivided profits' and the other assets of the company."

32. The learned court erred in its 7th Conclusion of Law which reads as follows:

"7. Under the Act of 1907 as amended there is no discrimination against other assets of the company when the trust company act and its amendments provide for deduction of that portion of the capital stock, surplus, and undi- [fol. 104] vided profits invested in the shares of corporations liable to pay or relieved from payment of capital stock tax to the commonwealth. The sole purpose of this exemption clause was to avoid double taxation."

33. The learned court erred in its 8th Conclusion of Law which reads as follows:

"8. The Act of 1907 as amended imposes a tax on all the shares of the stock of trust companies in the hands of the stockholders whether they are resident or non-resident."

34. The learned court erred in its conclusion of law entitled "Statement" which reads as follows:

"Statement"

"Amount of tax	$2290.14
Payment on account	570.43
Balance due Commonwealth	$1719.71
Interest from April 8, 1933, being 60 days after date of settlement	54.74
Total	$1774.45
Attorney General's Commission of 5%	88.72
Amount now due	$1863.17"

35. The learned court erred in directing the following "Judgment" to be entered:

"Judgment"

"And now, October 19, 1933, judgment is hereby directed to be entered in favor of the Commonwealth and against [fol. 105] Schuylkill Trust Company for the sum of $1863.17, unless exceptions be filed within the time limited by law.

Frank B. Wickersham, A. L. Judge for the Court en Banc."

36. The learned court erred in not directing judgment to be entered in favor of the Schuylkill Trust Company, the defendant, and against the Commonwealth of Pennsylvania, the plaintiff, together with costs.

John Robert Jones, Attorney for the Defendant.

IN COURT OF COMMON PLEAS

OPINION OVERRULING EXCEPTIONS

By the COURT:

After careful consideration of the many exceptions filed to the opinion and findings of the court we have modified our opinion and findings as follows:

As to Exception No. 20, our opinion and findings are modified to read as follows:

"It must be observed that this procedure was not an effort on the part of the taxing authorities to levy a tax

upon these federal securities; the only purpose was to arrive at the taxable value of the shares for we have heretofore determined that the tax imposed upon trust companies by the Act of 1929 was not a tax on personal prop-
[fol. 106] erty within the meaning of the Personal Property Tax Act of June 17, 1913, P. L. 505, nor a tax on the assets of the corporation, but a tax upon the shares held by the shareholders of said trust company. We are of opinion, therefore, that when the taxing officers of the Commonwealth of Pennsylvania refused to deduct the value of these federal securities from the total assets of the trust company they were acting strictly in accordance with the law as defined by the Supreme Court of the United States."

As to Exception No. 29, our finding in that case is modified so as to read as follows:

"The tax imposed upon trust companies by the Act of 1907 as amended is not a tax on personal property within the meaning of the Personal Property Tax Act of June 17, 1913, P. L. 505, nor a tax on the assets of the trust company but a tax upon the shares held by the shareholders of such trust company."

Each of the remaining exceptions is hereby severally and specifically overruled. Judgment is entered as directed in the original opinion filed and dated October 19, 1933.

Frank B. Wickersham, A. L. Judge.

[fol. 107] IN COURT OF COMMON PLEAS

SUPPLEMENTAL ORDER

And now, November 24, 1933, by request of counsel for the defendant we make the following order, supplemental to the order above stated, to wit: Exceptions to our modified ruling on Exceptions Nos. 20 and 29 are also overruled, and the following order is now made:

And now November 24, 1933, it is the final order, judgment and decree of the court that each of the exceptions be and is hereby overruled.

By the Court:

Frank B. Wickersham, A. L. Judge.

IN COURT OF COMMON PLEAS

FINAL JUDGMENT—November 24, 1933

"And now, November 24, 1933, by request of counsel for the defendant we make the following order, supplemental to the order above stated, to wit: Exceptions to our modified ruling on Exceptions Nos. 20 and 29 are also overruled, and the following order is now made:

"And now November 24, 1933, it is the final order, judgment and decree of the court that each of the exceptions be and is hereby overruled.

By the Court:

Frank B. Wickersham, A. L. Judge.

[fol. 108] IN SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT

OPINION—Filed June 30, 1934

FRAZER, C. J.:

The Schuylkill Trust Company, located in Pottsville, appeals from a judgment of the Court of Common Pleas of Dauphin County affirming a re-settlement of an account for tax on shares of capital stock of the corporation made by the Board of Finance and Revenue for the year 1930. The tax in question was levied under authority of the Act of June 13, 1907, P. L. 640 as last amended by the Act of April 25, 1929, P. L. 673, and amounts to $2,290.14, based upon a taxable value of defendant's shares estimated at $458,028. The Act of 1929, supra, provides in section 1 that "it shall be the duty of the Department of Revenue to assess such shares [of trust companies] for taxation at the rate of five mills upon each dollar of the actual value thereof, the actual value of each share of stock to be ascertained and fixed by adding together so much of the amount of capital stock paid in, the surplus and undivided profits as is not invested in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of capital stock tax or tax on shares, and dividing this amount by the number of shares." The method followed in this case in computing the actual value of the shares of stock of appellant subject to tax was

approved by this Court in Commonwealth v. Hazlewood Savings & Trust Co., 271 Pa. 375, i. e. by permitting the [fol. 109] trust company to deduct from the value of its capital stock, undivided profits and increased market value a proportionate amount of the value of stock in other corporations owned by it upon which a tax had already been paid or which was relieved from taxation. Appellant contests the validity of the settlement on several grounds which can be conveniently grouped under three headings.

First, appellant contends that in estimating the taxable value of its shares, the market value of the shares of stock in other corporations owned by it should be deducted from the value of its capital stock, surplus and undivided profits. This argument was rejected in the Hazlewood Savings & Trust case, supra, for reasons which need not be repeated here. The amendments made to the Act of 1907 P. L. 640 since the decision in the case cited above do not alter the force or effect of the conclusion there reached. Appellant has not indicated that the stock it holds in other corporations was purchased out of "the capital stock paid in, the surplus and undivided profits" and in the absence of such proof, an apportionment of the value of the tax paid or non-taxable securities between the fund just stated and the total assets was entirely equitable.

Secondly, appellant complains that the value of United States securities, Philippine Island bonds, and Joint Stock Land Bank bonds held by it was not deducted from the value of the shares in determining the taxable value. These securities are listed with a value of $151,207 and are included in the total assets of $3,755,882. There was no infringement of the immunity from taxation of government securities for the reason that the tax here in question was [fol. 110] levied upon the shares qua shares and not upon the assets of the corporation. Northern Trust Co. v. McCoach, 215 Fed. 991. See also Merchants' & Manufacturers' National Bank of Pittsburgh v. Pennsylvania, 167 U. S. 461 and Van Allen v. The Assessors, 70 U. S. 573.

Appellant also objects to the refusal of the Board of Finance and Revenue to deduct the whole value of shares in the Philadelphia National Bank owned by it. This question was not raised in the original specification of objections and was not discussed by the court below; consequently it will not be considered here. Commonwealth v. Philadelphia City and County, 157 Pa. 550. It should be noted in passing,

however, that in estimating the value of appellant's securities upon which a tax was paid or which were exempt from tax, for purposes of apportionment between the total assets and the value of the capital stock, surplus and undivided profits, the tax officers of the Commonwealth included the Philadelphia National Bank stock at its full value, namely $20,202.

Lastly, appellant argues that even though the tax in question in this proceeding be a tax on shares rather than a tax on the assets of the trust company, there is no jurisdiction in the Commonwealth of Pennsylvania to levy a tax on 166 shares owned by non-residents. The authorities relied upon by counsel for appellant do not sustain this proposition. Commonwealth v. Standard Oil Company, 101 Pa. 119 was a capital stock tax case and does not impinge upon our decision here. Dupuy v. Johns, 261 Pa. 40 relates to personal property tax levied under the Act of June 17, 1913, P. L. 507 and is likewise not in point. Nor is the tax here in question [fol. 111] within the prohibition against double taxation enunciated by the decisions of the United States Supreme Court in Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204 and First National Bank of Boston v. Maine, 284 U. S. 312, for those cases concern the imposition of transfer inheritance taxes upon choses in action at the death of the owner and can have no application here. The principle that shares of stock of a corporation may be taxed by the state of incorporation whether in the hands of resident or non-resident owners is clearly upheld in Corry v. Baltimore, 196 U. S. 466, where it is said, pages 476,477: "* * * the sovereignty which creates a corporation has the incidental right to impose reasonable regulations concerning the ownership of stock therein, and * * * a regulation establishing the situs of stock for the purpose of taxation, and compelling the corporation to pay the tax on behalf of the shareholder, is not unreasonable regulation." We are of opinion the Act of 1907, P. L. 640, as amended by the Act of April 25, 1929, P. L. 673 establishes the situs of the shares of appellant in Pennsylvania for the purpose of taxation within the meaning of the act.

The assignments of error are overruled and the judgment is affirmed.

[File endorsement omitted.]

[fol. 112] IN SUPREME COURT OF THE UNITED STATES

OPINION—November 11, 1935.

Mr. Justice ROBERTS delivered the opinion of the Court:

The appellant, a trust company organized under the laws of Pennsylvania, challenges a statute of the State as construed and applied in the assessment of a tax for the year 1930, denominated a tax on shares. From a settlement made against the company by the Department of Revenue an appeal was taken to the Court of Common Pleas of Dauphin County which, after trial without a jury, entered judgment in favor of the Commonwealth.[1] The Supreme Court of Pennsylvania affirmed the judgment.[2] The appellant's contention is that the Act as so construed and applied by the Department and the courts discriminates against United States Government bonds, bonds of Federal instrumentalities, and national bank stocks included in the appellant's assets. The appellee replies that the tax is upon the shares of stock as such and not upon the assets which represent their value; that, in fact, no tax whatever, much less a discriminatory tax has been levied upon exempt assets of the company.

Prior to the year 1907 Pennsylvania trust companies were liable for what is known as a capital stock tax, levied upon the corporation. In the administration of that form of exaction certain securities, such as United States bonds and [fol. 113] national bank shares, are eliminated from tax by deduction of their value from the value of the total assets of the corporations which own them. The deduction of exempt securities is made to avoid double taxation, the theory being that the shares issued by a corporation and its capital stock are identical so that taxation of the one is taxation of the other.[3]

On June 13, 1907, the General Assembly adopted an act prescribing another method of taxation in the case of trust companies. Its pertinent provisions are copied in the mar-

---

[1] 38 Dauphin County Reports, 22.

[2] 315 Pa. 429.

[3] Com. v. Standard Oil Co., 101 Pa. 119, 145; Com. v. Fall Brook Coal Co., 156 Pa. 488; Com. v. Penna. R. R. Co., 297 Pa. 308, 314; Com. v. Eastern Securities Co., 309 Pa. 44.

gin.[4] This statute in terms lays a tax upon shares rather than upon corporate assets. The value of each share is to be ascertained by adding the value of capital stock paid in, surplus, and undivided profits, and dividing the total by the number of outstanding shares. Thus the exaction is measured by the value of the company's net assets. This involves the exclusion of corporate liabilities from the measure of value to which the rate is to be applied.[5] By successive amendments it was directed that the value of each share of stock should be ascertained by adding together so much of the amount of capital stock paid in, surplus, and undivided profits as is not invested in the shares of stock of cor- [fol. 114] porations liable to pay to the Commonwealth a capital stock tax or tax on shares, or relieved from the payment of capital stock tax or tax on shares, and dividing the sum by the number of outstanding shares.[6] These amendments were combined with the original act, in a single statute of April 25, 1929.[7]

Obviously the theory of the amendments was that as trust companies, so long as they had been liable for capital stock tax, had been exempted from payment of tax reckoned upon assets which had already paid a tax or were exempt from

---

[4] "Section 1. That from and after the passage of this act, every company * * * shall * * * make to the Auditor General a report in writing * * * setting forth the full number of shares of the capital stock subscribed for or issued by such company, and the actual value thereof, which shall be ascertained as hereinafter provided; and thereupon it shall be the duty of the Auditor General to assess such shares for taxation at the rate of five mills upon each dollar of the actual value thereof, the actual value of each share of stock to be ascertained and fixed by adding together the amount of capital stock paid in, the surplus and undivided profits, and dividing this amount by the number of shares. * * *"

[5] Com. v. Trust Company, 237 Pa. 353, 355, 356.

[6] Act of July 11, 1923, P. L. 1071-72. Act of May 7, 1927, P. L. 853, 855.

[7] P. L. 673. The Act of April 9, 1929, P. L. 343, Sections 807 and 1705, (the so-called Fiscal Code) did not alter the substance of the law but merely effected the executive agencies which were to administer it.

tax,—that is, the stock of corporations of Pennsylvania which had paid a capital stock tax or whose shares had been taxed or had been exempted from tax,—it was proper, in levying a tax upon the shares of trust companies reckoned upon the net assets of those companies, to exempt from such net assets so much thereof as represented shares of corporations which had already paid a tax or, under the policy of the Commonwealth had been exempted.

The impost as laid by the Act of 1907 was a true tax on shares and not a tax upon the assets of trust companies. Such an exaction is not a tax upon United States securities owned by the corporation whose shares are taxed or upon securities exempt from taxation because issued by instrumentalities of the Federal government.[8]

[fol. 115] It will be observed that by the amendments to the Act of 1907 the measure of the tax is not in any sense the value of the shares as such but a value reflected by so much of the net assets as is not represented by shares of Pennsylvania corporations already taxed or exempt from tax. In the administration of the act as amended the procedure which has been followed and approved[9] is first to deduct the liabilities from the total assets, thus arriving at the net assets. The theory has been that exempt shares owned by the trust company must be shown to have been actually purchased out of capital stock or surplus in order to obtain a deduction of their full value from the gross assets. If the company is unable to demonstrate that they were purchased in that manner then a proportional method of deduction is adopted. This is to apply to the taxed value of all such exempt securities a fraction the numerator of which is the net assets and the denominator the gross assets. The result of applying this fraction to the taxed value of exempt shares is said to give the proportion of those exempt shares attributable to capital, surplus, and undivided profits, and the quotient is accordingly deducted from the value of the net assets to obtain the measure of the tax on all the shares, and this divided by the number of outstanding

---

[8] Van Allen v. Nolan, 3 Wall. 573; Cleveland Trust Company v. Lander, 184 U. S. 111; Des Moines National Bank v. Fairweather, 263 U. S. 103.

[9] Com. v. Hazlewood Savings and Trust Company, 271 Pa. 375.

shares, gives the measure of the tax for each share. In the instant case the trust company held amongst its assets shares of Pennsylvania corporations, exempt from tax, of the value of $135,787. It also held shares of the Philadelphia National Bank of the value of $20,202. These were found by the Department of Revenue to have been taxed at a total taxable value of $71,373. Applying the fractional formula mentioned it was found that $8,886 of their taxable [fol. 116] value should be attributed to capital, surplus and undivided profits, and deducted from the amount of the net assets. As the net assets had been ascertained to be $467,714 the deduction brought this figure down to $458,028 to which the rate of tax of five mills was applied.

It should be stated that under the Act the corporation is required to make a report as the basis for the calculation of the tax and, upon that report, the Department of Revenue settles the tax which is assessed against the corporation. The trust company, and not the stockholders, is liable in the first instance for the tax. Though given the right to pay the tax from its funds or to collect the amount from its stockholders, neither the company nor the Commonwealth is given any lien upon the stock for the amount of the tax. As the obligation to pay the Commonwealth is that of the company, its interest and its right to contest are beyond question.

In specifications of objection filed with its appeal from the tax settlement in the Court of Common Pleas the trust company insisted that all exempt shares (including the shares of the Philadelphia National Bank) should be deducted from the gross assets in full. This would exempt their full value rather than a proportion of their taxed value as ascertained by the use of the proportional method above described. The further objection was made that the method of settlement adopted resulted in discrimination against exempt securities issued by the United States or other Federal instrumentalities and that these should have been deducted at their full value from the gross assets before any computation of the tax. The Common Pleas Court overruled these objections (without discussing the [fol. 117] treatment of the national bank shares), saying, with respect to United States bonds and like exempt securities, that as the tax was a tax upon shares, and not upon the assets of the trust company, those securities had not in fact been taxed. In affirming the judgment the Supreme

Court of Pennsylvania said that as the specifications of objections had not covered the point as to national bank shares and the court below had not discussed that matter it was not open in the appellate court. As respects United States bonds, and other Federal securities, it concurred in the view of the lower court.

First. The appellant insists that as merely a portion of the net assets of the corporation is taken as the basis or measure of the tax it cannot be upon the shares as shares. The appellee relies upon the statement of the Supreme Court of Pennsylvania that the levy is upon the shares and not upon assets. The appellant asks us to find to the contrary. We give great weight to the characterization of a tax, or the interpretation of a state law, emanating from the highest court of the state, but where a federal question is involved we are not bound by the label attached to the tax or the character ascribed to the law. We must determine for ourselves the true nature of the tax by ascertaining its operation and effect.[10]

It is clear that the tax is not measured by each shareholder's aliquot proportion of all the assets of the company. If amongst those assets are found shares of stock of Pennsylvania corporations which, or whose shares, have been declared exempt by the State, this exemption is effected in the [fol. 118] instant case by taking them wholly or partially out of the net assets which are the base for the tax. The appellant says this demonstrates that the tax is one upon assets. If the appellant is right the exaction operates as a discrimination against Government securities and other assets exempt under federal law. Missouri v. Gehner, 281 U. S. 313. If the tax is one truly upon that independent property evidenced by the ownership of a share of corporate stock its collection does not discriminate against United States securities.[11]

We think that the issue of discrimination is not to be resolved by a choice between the two contentions as to the nature of the tax. The point is that the State has chosen a portion only of the net assets of the corporation as a measure of the tax, whether the exaction be from the company or its shareholders. The State has exempted certain assets on the

---

[10]Senior v. Braden, 295 U. S. 422, 429.

[11]See note 8, supra.

theory that to measure the tax in part by their value would in effect be to tax them twice. If to measure the shareholder's tax by inclusion of these taxed or exempted securities found amongst the company's assets would be to tax the shareholder in virtue of the company's ownership of those securities, it seems clear that to refuse to exempt United States securities from the measure of the tax is to lay a tax reckoned upon their value. To put it otherwise, if to exclude securities already taxed or exempted from tax pursuant to the policy of the Commonwealth avoids double taxation, to include United States securities in the measure of the tax seems inevitably to increase the burden of the tax by reason of their ownership. If the burden of the tax be lifted in respect of some securities (as it is by confession [fol. 119] from those issued by certain Pennsylvania corporations) it must necessarily fall on the remaining securities owned by the company. If the tax is lifted from the shares of certain trust companies because those companies own only stocks already taxed or relieved from taxation by the State, and shares in other trust companies are taxed amongst whose assets there are United States bonds or other securities entitled to exemption because issued by federal instrumentalities which are figured in the base of the tax, it is impossible to avoid the conclusion that the law discriminates in favor of the former and against the latter solely by reason of ownership of such federal securities.

Second. It is indisputable that the shares of stock of the Philadelphia National Bank owned by the appellant were included in the base or measure of the tax. It is undenied that these shares had been taxed to the trust company, as permitted by R. S. 5219, and in accordance with the applicable statutes of Pennsylvania;[12] and it must be conceded that having once been taxed to their owner, the trust company, they may not again be made the base or measure of a tax to that company's stockholders. Bank of California v. Richardson, 248 U. S. 476. The trial court seems to have excluded them upon the theory that they were not within the intent of the taxing statute, which the court thought meant to exempt only shares of Pennsylvania corporations which had been taxed or relieved from tax by local law.

---

[12]Act of July 15, 1897, P. L. 292, as amended by Act of April 25, 1929, P. L. 677.

This view the trial court appears to have abandoned in a later case,[13] where it was held that stock of a federal reserve bank was within the meaning of the Pennsylvania act and [fol. 120] entitled to exemption. This later decision was affirmed by the Supreme Court of Pennsylvania.[14]

We are told that the matter is not open here for the reason that it was not raised on appeal to the Dauphin County court, was not discussed by that court, and consequently the Supreme Court refused to consider it. Whether the point was in fact raised in the court below is itself a federal question, and we are bound to examine the record to resolve it.[15] It appears that in the specifications of objection filed in Dauphin County court complaint was made that whereas there should have been a flat deduction of all shares of corporations theretofore taxed or exempted from tax, shares of the Philadelphia National Bank were included in shares granted only a proportional deduction. It further appears that in accordance with Pennsylvania practice, after the trial of the cause to the court without a jury the appellant submitted requests for conclusions of law. Amongst these were requests 10 and 16, which referred specifically to the Philadelphia National Bank stock, and severally requested the court to find (a) that these shares having been once taxed under another act, to the trust company as owner, could not be taxed a second time, and (b) that the failure to deduct the full value of the shares from the net assets of the trust company operated to discriminate and impose a tax upon the shares of stock in violation of R. S. 5219, they having once been taxed under another statute. The court answered both these requests in writing, "Refused." The [fol. 121] refusal of the requests was made the subject of exceptions which quoted the requests and the answers of the court verbatim. The exceptions were overruled by the court and errors were assigned to the Supreme Court of Pennsylvania to the overruling of the exceptions applicable to the refusal of the requests in question, which were again quoted verbatim, with the answer of the court to the request and

---

[13] Com. v. Provident Trust Co., 40 Dauphin County (Pa.), 146, 177.

[14] 319 Pa. 385, 180 Atl. 16.

[15] Carter v. Texas, 177 U. S. 442, 447; Ward v. Love County, 253 U. S. 17, 22.

the overruling of the corresponding exception. In addition to these assignments of error the appellant in the statement of questions involved, required by the rules of the Supreme Court of Pennsylvania to be made a part of the brief on appeal, amongst others set forth the following question: "Are assets consisting of national bank shares to be eliminated from consideration in determining the taxable value to which the rate of tax is to be applied by deducting their actual value from the value of the net assets? Answer of the court below No."

We think that notwithstanding the Dauphin County court, in its opinion, failed to discuss this matter, as the Supreme Court of Pennsylvania points out, the question was sharply presented to that court and decided by it, and that the rights of the appellant were specifically preserved and pressed at every stage of the proceeding. We find, therefore, that the question is here for decision. It might well be disposed of by reference to what has already been said with respect to bonds of the United States and like securities. The discrimination here disclosed is, however, more obvious than in the case of the other securities mentioned. The Commonwealth of Pennsylvania elected to exempt certain shares of stock of its own corporations because they had already been taxed. It exempted them be- [fol. 122] cause to include them in the base would be in effect to tax them a second time. The shares of the Philadelphia National Bank had also been taxed pursuant to R. S. 5219, and if they were to be treated on an equal footing with shares of domestic corporations the State was bound to afford them a similar exemption from a second exaction.

Third. The appellant argues that if, as declared by the Supreme Court of Pennsylvania, the tax is one upon shares as such, it cannot be laid or collected by the Commonwealth in respect of 166 shares of stock of the appellant which by confession are owned by individuals citizens and residents of states other than Pennsylvania, for the reason that such shares have no taxable situs in Pennsylvania. In view of the grounds of our decision we find it unnecessary to pass upon this contention.

The judgment must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

[November 11, 1935]

Mr. Justice CARDOZO, dissenting:

I think the judgment under review is right in so far as it permits the inclusion of government bonds as factors of value in the assessment of the tax, and wrong only in so far as it violates a provision of Sec. 5219 of the United States Revised Statutes by the inclusion of shares in the Philadelphia National Bank.

The tax in controversy is not laid upon the capital of the trust company. It is laid upon the shares, payment being made in the first instance by the corporation as the agent of the shareholders with a remedy over for moneys so ad- [fol. 123] vanced. Home Savings Bank v. Des Moines, 205 U. S. 503, 518; Commonwealth v. Merchants' & Manufacturers' National Bank, 168 Pa. 309; affirmed 167 U. S. 461; Commonwealth v. Mortgage Trust Co., 227 Pa. 163; Commonwealth v. Union Trust Co. of Pittsburgh, 237 Pa. 353; Northern Trust Co. v. McCoach, 215 Fed. 991; cf. National Bank v. Commonwealth, 9 Wall. 353, 362; Aberdeen Bank v. Chehalis County, 166 U. S. 440, 444, 445. The tax being laid upon the shares, and not upon the capital, the Constitution does not make it necessary in the assessment of the tax to reduce the value of the shares to the extent that bonds of the national government are included in the capital. This is settled law. Van Allen v. The Assessors, 3 Wall. 573; Cleveland Trust Co. v. Lander, 184 U. S. 111; Des Moines Bank v. Fairweather, 263 U. S. 103, 112; Educational Films Corp. v. Ward, 282 U. S. 379, 390.

The argument for the appellant is that the tax might have been lawful if the shares had been valued without any deductions growing out of the nature of the capital, but that the moment a deduction was allowed in respect of any class, there was an unlawful discrimination against government securities unless the deduction was enlarged and made applicable to them. The attack is thus confined to amendments of the act which were placed upon the statute books in three years (1923, 1927, 1929), for there was no deduction of any kind under the act as first adopted in 1907. These amendments provide that the assessment shall be reduced by deducting therefrom (1) such part of the assets of the trust company as is invested in shares of other corporations taxed by the Commonwealth of Pennsylvania upon capital or shares (1923, July 11, P. L. 1071,

[fol. 124] 1072, reenacted by 1927, May 7, P. L. 853, 855; 1929, April 25, P. L. 673, 675), and (2) such part as is invested in the shares of other corporations relieved by the Commonwealth from a capital tax or a tax on shares (1927, May 7, P. L. 853, 855; 1929, April 25, P. L. 673, 675). The purpose of the first deduction is to avoid double taxation or something akin thereto. Cf. Commonwealth v. Fall Brook Coal Co., 156 Pa. 488, 495; Commonwealth v. Lehigh Coal & Navigation Co., 162 Pa. 603, 609. The purpose of the second is to promote the policy of the Commonwealth whereby particular kinds of business (i. e., the business of manufacturing corporations, laundering corporations and corporations for the processing and curing of meats) are relieved from the payment of taxes imposed on other corporations to the extent that the business so favored is carried on in Pennsylvania.* Dupuy v. Johns, 261 Pa. 40, 46.

---

* The following is the text of the statute which defines the corporations entitled to such relief:

"And provided further, That the provisions of this section shall not apply to the taxation of the capital stock of corporations, limited partnerships, and joint-stock associations, organized for laundering, for the processing and curing of meats, their products and by-products, or for manufacturing purposes, which is invested in and actually and exclusively employed in, carrying on laundering, the processing and curing of meats, their products and by-products, or manufacturing within the State, excepting companies engaged in the brewing or distilling of spirits or malt liquors, and such as enjoy and exercise the right of eminent domain; but every corporation, limited partnership, or joint-stock association organized for the purpose of laundering, or processing and curing meats, their products and by-products, or manufacturing, shall pay the State tax of five mills herein provided, upon such proportion of its capital stock, if any, as may be invested in any property or business not strictly incident or appurtenant to the laundering or manufacturing business, or the business of processing and curing meats, their products and by-products, in addition to the local taxes assessed upon its property in the district where located; it being the object of this proviso to relieve from State taxation only so much of the capital stock as is invested purely in the laun-

[fol. 125] At the time of the assessment the appellant was the owner of shares in corporations that paid a tax upon their capital to the Commonwealth of Pennsylvania. Purdon's Pennsylvania Statutes, Title 72, § 1871. These shares will be described for convenience as investments in class number 1. Except for certain shares in the Philadelphia National Bank, which will be separately considered, the assets did not include an interest in corporations that paid a tax upon their shares as distinguished from one upon their capital. The appellant was also the owner, or so it will be assumed, of shares of stock in manufacturing corporations that were relieved from any tax. These shares will be described for convenience as investments in class number 2. The holding now is that the deduction of the shares of either of these classes is an act of discrimination forbidden by the national constitution unless investments in obligations issued by the national government are accorded the same favor.

I read the cases otherwise. The statute was not passed as an act of "unfriendly discrimination" (Adams v. Nashville, 95 U. S. 19; Mercantile Bank v. New York, 121 U. S. 138, 161, Aberdeen Bank v. Chehalis County, supra, at p. 461) against the national securities, nor was it passed in aid of classes of investments with which the national securities are in substantial competition. In the absence of one or other of these motives or results the prejudice, if any, is too remote to be forbidden. There is no room in [fol. 126] the solution of problems of this order for doctrinaire definitions, heedless of practical results. Metcalf & Eddy v. Mitchell, 269 U. S. 514, 523, 524. "In a broad sense, the taxing power of either government, even when exercised in a manner admittedly necessary and proper,

---

dering or manufacturing plant and business, or the plant and business used in the processing and curing of meats, their products and by-products: Provided, further, In case of fire and marine insurance companies, the tax imposed by this section shall be at the rate of three mills upon each dollar of the actual value of the whole capital stock: Provided, That nothing in this act shall be so construed as to apply to building and loan associations chartered by the State of Pennsylvania." Purdon's Penn. Statutes, Title 72, § 1892.

unavoidably has some effect upon the other." Metcalf & Eddy v. Mitchell supra, at p. 523. A sterile formalism would quickly lead to an impasse, the activities of the states checked because of an indirect effect upon the agencies of the federal government, and the federal activities checked for fear of a like effect upon the agencies of the states. One must view the subject in a large way if government is to go on at all. Educational Films Corp. v. Ward, supra, at p. 390 and cases there cited; Pacific Co. v. Johnson, 285, U. S. 480, 489; Trinityfarm Co. v. Grosjean, 291 U. S. 466; Willcuts v. Bunn, 282 U. S. 216, 225, 226; Helvering v. Powers, 293 U. S. 214, 225.

"Unfriendly discrimination" might be inferred if securities of every kind were excluded from the reckoning with the single exception of the obligations of the national government. That would be an extreme case, the conclusion hardly doubtful. Even though hostility were not so pointed as in the case supposed, there might still be an invidious distinction if securities in substantial competition with evidences of indebtedness issued by the national government had been given a preferred position. Nothing of the kind appears. "For reason of public policy and not as an unfriendly discrimination" (Aberdeen Bank v. Chehalis County, supra at p. 461), the value of a share in a trust [fol. 127] company is to be ascertained by excluding from the assets the shares in other corporations that are liable to the state for a tax upon their capital. Let it be assumed, for illustration, that a trust company is the owner of shares of stock in a department store doing business in Philadelphia. Under the statutes of Pennsylvania a business of that kind pays a tax upon its capital. A trust company does not. If it did, a hardship akin to that of double taxation would result if its interest in the department store were made use of to magnify its burden. But the process of taxation does not end at that point. By the plan of the statute the assessor passes over the trust company and lays the tax upon the shareholders. The same considerations of fair dealing and equality are then applicable to them. So at least the legislature of Pennsylvania might not unreasonably believe. Never before has it been held that out of deference or favor toward the securities of government a state is disabled from framing its system of taxation along lines of equity and justice. Hepburn v. The School Directors, 23 Wall. 480, 485.

What is true of investments in class number 1 is true also of investments in class number 2. "For reasons of public policy and not as an unfriendly discrimination" (Aberdeen Bank v. Chehalis County, supra), corporations organized for laundering, for the processing and curing of meats, and for manufacturing within the state have been relieved by Pennsylvania from liability for a tax upon their capital. The motive dictating that exemption is the desire to induce capital to come or stay within the state when employed in forms of enterprise believed to be important for the good of the community. Dupuy v. Johns, supra; [fol. 128] Commonwealth v. Barnes Bros. Co., 5 Dauph. 75, 77; cf. New York State v. Roberts, 171 U. S. 658, 665, 666. In promotion of the same policy the shares of corporations thus relieved from liability for a tax are excluded from the reckoning when shareholders in trust companies are taxed upon the value of their holdings. The reckoning does not exclude the bonds or notes or other evidence of indebtedness of corporations of any kind, foreign or domestic. It does not exclude the shares of any corporation not engaged in the enumerated forms of business, except in so far as such other corporations have already paid a tax upon their capital or shares. It does not exclude the shares of manufacturing corporations except to the extent of the capital employed in Pennsylvania. The deduction is limited in range and beneficient in aim.

The situation, then, is this. Vast classes of securities—bonds and notes of every kind, as well as shares of stock in many and varied enterprises—are in the same position for the purpose of the tax in suit as government bonds and notes. The few investments that occupy a different position are not comparable in kind or in attractiveness to the obligations of the government and do not substantially compete with them. To hold that there was discrimination here in any forbidden sense is to hold that bonds and notes of the United States must be deducted from the value of the shares if there is a deduction of any form of investment, no matter how minute in amount or alien in quality. Assume, for illustration, an exemption of the shares of corporations engaged in the manufacture of books or in the sale of works of art, an exemption accorded in furtherance [fol. 129] of a policy to foster art and letters. If the prevailing opinion stands, the policy in such a case must be

abandoned or the federal bonds included. Assume again that laundering corporations only had been relieved by Pennsylvania from liability for a tax upon their capital. Laundering corporations, as we have seen, were actually relieved, but manufacturing corporations also. The prevailing opinion, if it stands, would bring us to a holding that laundering corporations could not be favored without hostility and peril to the treasury at Washington. This is to lose sight of the essence of discriminatory statutes and to stick in the bark of a hard and narrow verbalism.

From such incongruities and excesses the avenue of escape is clear. It is to be found in the acceptance of the test put forward in this opinion. The discrimination, as has been said, must be so marked as to justify the inference that it was unfriendly in design or at the very least it must favor forms of investment that are in substantial competition with government securities. A helpful analogy is found in the taxation of national banks. By R. S. § 5219; 12 U. S. C. § 548, the several states may tax the shares of national banks, but "the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks." There are many cases in this court expounding that enactment. Hepburn v. The School Directors, supra, was a case where a statute of a state had given exemption from taxation to "all mortgages, judgments, recognizances and moneys owing upon articles of agreement for the sale of real [fol. 130] estate." The court assumed that the exempt investments might be ranked as moneyed capital. The tax upon the bank shares was none the less upheld. The exemption was partial only. "It was evidently intended to prevent a double burden by the taxation both of property and debts secured upon it." Id. at p. 485. There was no token of a hostile purpose. "It could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt," Ibid. Adams v. Nashville, 95 U. S. 19, was a case where a municipal ordinance gave exemption from taxation to the municipal bonds. Again the ruling was that this exemption of particular property did not affect the validity of the tax upon the shares. "The plain intention of that statute [R. S. § 5219] was to protect the corporations formed under its authority from unfriendly discrimination by the States in the exercise

of their taxing power." Id. at p. 22. "It was not intended to cut off the power to exempt particular kinds of property if the legislature chose to do so." Ibid. Mercantile Bank v. New York, 121 U. S. 138, was a case where exemption had been given to bonds of municipal corporations and also to deposits in savings banks. Again the protest of discrimination was unavailing to defeat the tax. After quoting from Hepburn v. The School Directors and Adams v. Nashville, the court went on to say (p. 161): "The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national banks." The same note is sounded in Aberdeen Bank v. Chehalis County, supra. Even though the investments subjected to a lighter [fol. 131] tax are to be classed as moneyed capital, this is unavailing without more to condemn the classification as unlawful. Unless the favored moneyed capital is in substantial competition with the business of national banks, the preference is innocent in aim and harmless in result. At least, the harm, if any, is too remote and dubious to vitiate the tax. First National Bank v. Hartford, 273 U. S. 548, 552; Minnesota v. First National Bank, 273 U. S. 561, 568; Georgetown National Bank v. Anderson, 269 U. S. 341, 348; First National Bank v. Tax Commission, 289 U. S. 60, 65, 66; cf. Hibernia Savings Society v. San Francisco, 200 U. S. 310, 314, 315. The conclusion is even clearer where the investment may not properly be classified as moneyed capital at all.*

Two cases, National Life Insurance Co. v. United States, 277 U. S. 508, and Missouri ex rel. Missouri Insurance Co. v. Gehner 281 U. S. 313, much relied upon by the appellant, are far beside the mark.

The first of these cases brought up a controversy as to a tax laid by a state on the income of a life insurance company. The company was to be allowed (1) a deduction for tax exempt securities, and (2) an amount equal to 4% of its mean reserve fund, diminished, however, by the amount

---

* For other and less direct analogies see: Cumberland Coal Co. v. Board of Revision, 284 U. S. 23, 28; Iowa-Des Moines Bank v. Bennett, 284 U. S. 239, 245; Rowley v. Chicago & N. W. R. Co., 293 U. S. 102, 111.

of the first allowance, the interest on government securities exempt under the federal law. The court held that the effect of the second allowance was to cancel the exemption conceded by the first.

[fol. 132] The second of the two cases was one where in the view of a majority of the court a tax had been laid directly on the capital assets of the taxpayer and so on the government bonds included in the assets. It was not a case like this where the shares and not the capital were subjected to the burden.

I am unable for these reasons to discover an unlawful discrimination though the tax be assessed in accordance with the statute.

Assuming such a discrimination, I do not understand that any mandate is laid by this court upon the Supreme Court of Pennsylvania as to the choice between two methods of avoiding or correcting it.

The Acts of 1923, 1927 and 1929 prescribing the deductions, were amendatory statutes, separable, even though invalid, from the acts thereby amended. Eberle v. Michigan, 232 U. S. 700, 705; Davis v. Wallace, 257 U. S. 478, 484, 485; Truax v. Corrigan, 257 U. S. 312, 342.

If the state maintains the deductions prescribed by the amendments, it must remove the discrimination now held to be unlawful, even at the price of enlarging the deductions. Iowa-Des Moines Bank v. Bennett, 284 U. S. 239, 247. On the other hand, it may cancel the deductions altogether, annulling the amendatory acts in so far as they prescribe a new method of valuation and going back in that respect to the law previously in force. In that event the tax to be paid by the appellant will be increased instead of [fol. 133] lessened. The choice between these curative measures must be made by the state court.

For reasons stated in Bank of California v. Richardson, 248 U. S. 476, the assessment is excessive to the extent that it includes shares of stock of the Philadelphia National Bank belonging to the Trust Company. These shares having been taxed to the Trust Company as owner could not properly be taxed again to a shareholder of the owner. Bank of California v. Richardson, supra; R. S. § 5219.

Other questions are in the case, but they are not decided in the prevailing opinion, and will not be considered here.

The judgment should be modified by directing the deduction from the assessment of the value of the appellant's shares in the Philadelphia National Bank, and as modified affirmed.

Mr. Justice Brandeis and Mr. Justice Stone join in this opinion.

[fol. 134] MANDATE OF THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Pennsylvania, Middle District, Greeting:

Whereas lately in the Supreme Court of the State of Pennsylvania, Middle District, before you, or some of you, in a cause between Schuylkill Trust Company, Appellant, and the Commonwealth of Pennsylvania, Appellee, No. 19 May Term 1934, wherein the opinion and judgment of the said Supreme Court overruling the assignments of error and affirming the judgment of the Court of Common Pleas of Dauphin County, was duly entered in said cause on the 30th day of June, A. D. 1934;

And Whereas, in the present term of October, in the year of our Lord one thousand nine hundred and thirty-five the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court, in this cause be, and the same is hereby reversed with costs; and that the said appellant, Schuylkill [fol. 135] Trust Company, recover against the said appellee Three Hundred and Forty-four Dollars for its costs herein expended and have execution therefor.

And it is Further Ordered that this cause be, and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

November 11, 1935.

Charles Elmore Cropley, Clerk of the Supreme Court of the United States.

IN SUPREME COURT OF PENNSYLVANIA

REMITTITUR

MIDDLE DISTRICT OF PENNSYLVANIA,

The Commonwealth of Pennsylvania, sct:

To the Judges of the Court of Common Pleas for the County of Dauphin, Greeting:

Whereas, By virtue of our writ of certiorari from our Supreme Court of Pennsylvania in and for the Middle District, returnable in the said Court on the 21st Monday of the year of our Lord one thousand nine hundred and thirty-four, a Record was brought into the same Court of a Judgment rendered against Schuylkill Trust Company Appellant, at the suit of Commonwealth of Pennsylvania Appellee.

And it was so proceeded in our Supreme Court that the said judgment was affirmed and on appeal to the Supreme [fol. 136] Court of the United States, the same was reversed with costs, etc., as per mandate of said Supreme Court of the United States attached hereto and the record and proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the Act of Assembly in such cases made and provided,) ordered by the said Supreme Court to be remitted to the Court of Common Pleas for the County of Dauphin aforesaid, as well for execution or otherwise as to justice shall appertain:

Wherefore We Remit You the Record of the Judgment aforesaid and the proceedings thereupon, in order for execution or otherwise, as afoesaid.

Witness, the Hon. John W. Kephart, Chief Justice of our Supreme Court at Harrisburg, the 28th day of January in the year of our Lord one thousand nine hundred and thirty-six.

Homer Hummel Strickler, Deputy Prothonotary.

IN COURT OF COMMON PLEAS

PETITION FOR RULE TO SHOW CAUSE

To the Honorable the Judges of said Court:

The Commonwealth of Pennsylvania respectfully represents:

That in the case of Schuylkill Trust Company, Appellant v. The Commonwealth of Pennsylvania, to the above num- [fol. 137] ber and term, the Supreme Court of the United States issued the following mandate:

"The judgment must be reversed and the cause remanded for further proceedings not inconsistent with this opinion."

That upon the receipt of the above mandate by the Supreme Court of Pennsylvania, the prothonotary of said court remanded the cause to the Court of Common Pleas of Dauphin County for further proceedings not inconsistent with the opinion of the United States Supreme Court in accordance with the above mandate.

Wherefore, the Commonwealth of Pennsylvania respectfully prays:

1. That your Honorable Court should revise its original judgment in this case by eliminating all deductions originally allowed the Schuylkill Trust Company in pursuance to the Act of June 13, 1907, P. L. 640, as amended by the Act of July 11, 1923, P. L. 1071, as amended by the Act of May 7, 1927, P. L. 853, as amended by the Act of April 9, 1929, P. L. 343, and enter judgment in favor of the Commonwealth of Pennsylvania and against the Schuylkill Trust Company in conformity with the decision of the United States Supreme Court in the above case, in the amount of $2,334.57 according to the following formula and pursuant to the Act of June 13, 1907, P. L. 640:

Actual value of capital stock paid in, surplus and undivided profits x 5 mills = 466,914 x 5 mills equals $2,334.57.

[fol. 138] 2. That a rule be issued on the Schuylkill Trust Company to show cause why the judgment in the above entitled case should not be so modified.

Manuel Kraus, Deputy Attorney General for the Commonwealth of Pennsylvania.

And now to wit, this 11th day of February, 1936, the above petition having been presented by Manuel Kraus, Deputy Attorney General for the Commonwealth of Pennsylvania, a rule is issued on the Schuylkill Trust Company to show cause why the judgment should not be entered in accordance with the above petition, returnable in 15 days.

By the Court.

Wm. M. Hargest, P. J.

IN COURT OF COMMON PLEAS OF DAUPHIN COUNTY

DEMURRER

To the Honorable the Judges of said Court:

The Respondent, Schuylkill Trust Company, by its Attorney, John Robert Jones, by protestation, not confessing or acknowledging all, or any, of the matters or things, in the said Petition contained to be true, in such manner and [fol. 139] form as the same in said Petition are set forth and alleged, demurs to the whole of the said Petition, and for the cause of demurrer shows:

1. That, upon the face of the Petition, as against this demurrant, the petitioner is not entitled to the relief prayed for.

2. That upon the face of the Petition it is shown that the Pennsylvania statute, the Act of June 13, 1907, Pamphlet Laws 640, was not the law of Pennsylvania in the calendar year ending December 31, 1930.

3. That upon the face of the Petition it is shown that the statute of the State of Pennsylvania imposing a tax in the calendar year ending December 31, 1930 upon trust companies or upon the owners of shares of stock issued by trust companies was the Act of April 25, 1929, Pamphlet Laws 673, and that upon an appeal to this court from the settlement of tax for the said tax and calendar year made by the Department of Revenue and approved by the Department of the Auditor General of the Commonwealth under authority of the said statute was the judgment of this court entered.

4. That the record of this case shows that a tax settlement was made against the demurrant, Schuylkill Trust

Company, for the tax and calendar year ending December 31, 1930 by the Department of Revenue and approved by the Department of the Auditor General of the Commonwealth under authority of the Pennsylvania statute, the Act of April 25, 1929, Pamphlet Laws 673, that a Petition for Resettlement filed under the provisions of Section 1102 [fol. 140] of Article XI of the Fiscal Code, the Pennsylvania statute, the Act of April 9, 1929, Pamphlet Laws 343, was refused, that upon Petition for Review filed with the Board of Finance and Revenue of the Commonwealth a resettlement of such tax was made by the said Board under authority of the said Act of April 25, 1929, Pamphlet Laws 673, and Section 1103 of Article XI of the Fiscal Code, the Pennsylvania statute, the Act of April 9, 1929, Pamphlet Laws 343, that it was under authority of the said statute, the Act of April 25, 1929, Pamphlet Laws 673, that this Court in the exercise of appellate jurisdiction conferred upon it by Section 1104 of Article XI of the Fiscal Code, the Pennsylvania statute, the Act of April 9, 1929, Pamphlet Laws 343, an appeal having been taken by the demurrant to this court from the decision of the said Board of Finance and Revenue, entered its judgment affirming the tax resettlement so made, that it was under authority of the said Act of April 25, 1929, Pamphlet Laws 673, and said Section 1104 of Article XI of the said Fiscal Code, the Pennsylvania statute, the Act of April 9, 1929, Pamphlet Laws 343, that the Supreme Court of Pennsylvania in the exercise of appellate jurisdiction affirmed the judgment of this court and that it was the said State statute, the Act of April 25, 1929, Pamphlet Laws 673, as it was construed and applied to the demurrant in the tax resettlement made against it and the judgments entered by this court and the State Supreme Court hereinbefore recited which the Supreme Court of the United States, the court of final jurisdiction, held to be discriminatory, in violation of the 14th Amendment to the Constitution of the United States; hence it is that this court is without any statutory or constitu- [fol. 141] tional power to revise its judgment so entered as aforesaid under authority of the said Act of April 25, 1929, Pamphlet Laws 673, by striking off such judgment and substituting in lieu of it a judgment for the tax claimed to have been imposed upon the demurrant in the tax and calendar year ending December 31, 1930, as a member of a

separate class of taxables, by another state statute under the authority of which no tax was imposed in the said tax and calendar year upon any corporation or upon the owners of the shares issued by any corporation.

5. That this court is without authority to grant the prayer of the Petition to make a settlement of tax against the demurrant for the tax and calendar year ending December 31, 1930 under the alleged authority of a State statute, the Act of June 13, 1907, Pamphlet Laws 640, and to embody a tax settlement so made by it in a judgment which is to be substituted for a judgment of this court which had been entered upon an appeal to it from a tax resettlement made by the taxing officials of the Commonwealth as recited in paragraph "4", supra, under authority of the State statute, the Act of April 25, 1929, Pamphlet Laws 673.

6. That if the State statute, the Act of June 13, 1907, Pamphlet Laws 640, had been the law of the Commonwealth of Pennsylvania in the tax and calendar year ending December 31, 1930 and if this court did have the power to enter a judgment as prayed for in the Petition upon which the rule was issued to impose a tax for the tax and calendar year ending December 31, 1930 under the authority of the said [fol. 142] Act of June 13, 1907, Pamphlet Laws 640, and to substitute such judgment in lieu of the judgment which this court entered, upon appeal, for the said tax and calendar year under authority of the State statute, the Act of April 25, 1929, Pamphlet Laws 673, nevertheless the entry of such judgment as prayed for in the Petition violates the provisions of the recited Act of June 13, 1907, Pamphlet Laws 640, for the reason that the judgment prayed for in the Petition does not allow the deductions to which the demurrant would be entitled under the provisions of the said Act of 1907.

7. That if the said State statute, the Act of June 13, 1907, Pamphlet Laws 640, had been the law of the Commonwealth of Pennsylvania in the tax and calendar year ending December 31, 1930, an entry of judgment by this court as prayed for in the said Petition violates the provisions of the said Act of June 13, 1907, Pamphlet Laws 640, for under the express provisions of the said statute the sole power and

duty to ascertain and fix the taxable value to which the millage rate of tax is to be applied in order to determine the tax liability, grant the deductions allowed by the said statute, assess the tax imposed and embody the same in a tax settlement is that of the Auditor General of the Commonwealth of Pennsylvania (or the Department of Revenue if the State statute, the Fiscal Code, the Act of April 9, 1929, Pamphlet Laws 343, now be held to amend the said Act of June 13, 1907, Pamphlet Laws 640) upon a report required to be made to him at the time specified in said statute by the trust companies which constitute the members of the class of taxables created by such statute; from which [fol. 143] settlement any trust company has the right of appeal to this court under the provisions of the Act of March 30, 1811, 5 Smith's Laws 228, and its amendments.

8. That the entry of a judgment as prayed for in the Petition upon which the rule upon the demurrant was issued imposing a tax for the tax and calendar year ending December 31, 1930 under the alleged authority of a State statute, the Act of June 13, 1907, Pamphlet Laws 640, is in violation of Section 1 of Article IX of the Constitution of Pennsylvania which provides:

"All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; * * *"

9. That the entry of a judgment as prayed for in the Petition upon which the rule upon the demurrant was issued imposing a tax for the tax and calendar year ending December 31, 1930 under the alleged authority of a State statute, the Act of June 13, 1907, Pamphlet Laws 640, is in violation of the decision of the Supreme Court of the United States and the judgment directed by such court to be entered in the above entitled appeal.

10. That the entry of a judgment as prayed for in the Petition upon which the rule upon the demurrant was issued imposing a tax for the tax and calendar year ending December 31, 1930 under the alleged authority of a State statute, the Act of June 13, 1907, Pamphlet Laws 640, violates Clause 2 of Section 8 of Article I of the Constitution of [fol. 144] the United States which gives the Congress of the

United States the power to borrow money on the credit of the United States, Section 3701 Revised Statutes of the United States, United States Code, Title 31, Section 742, Section 5219 Revised Statutes of the United States, United States Code, Title 12, Section 548, the Acts of Congress recited in the Assignments of Error filed with the Supreme Court of the United States in the above entitled appeal to such court and the decisions of the Supreme Court of the United States in the cases of Missouri v. Gehner, 281 U. S. 313 (1930), MacAllen Co. v. Mass., 279 U. S. 620 1929), Bank of California v. Richardson, 248 U. S. 476 (1919) and Corry v. Baltimore, 196 U. S. 466 (1905).

11. That the entry of a judgment as prayed for in the Petition upon which the rule upon the demurrant was issued imposing a tax for the tax and calendar year ending December 31, 1930 under the alleged authority of a State statute, the Act of June 13, 1907, Pamphlet Laws 640, violates Section 1 of the 14th Amendment to the Constitution of the United States by depriving the demurrant and the owners, both residents and non-residents of the State of Pennsylvania, of the shares of stock issued by the demurrant of its and their property without due process of law and by denying to the demurrant and the owners, both residents and non-residents of the State of Pennsylvania, of the shares of stock issued by the demurrant the equal protection of the laws.

Wherefore, and for other good causes of demurrer appearing upon the face of the Petition, this demurrant demurs [fol. 145] thereto and prays the judgment of your Honorable Court whether it shall be required to make any answer to the said Petition, and it further prays to be hence dismissed with its reasonable costs in this behalf sustained.

John Robert Jones, Attorney for Demurrant.

IN COURT OF COMMON PLEAS OF DAUPHIN COUNTY

JUDGMENT—April 20, 1936

And now, April 20, 1936, for the reasons given in an opinion hereafter to be filed in this case and in the case of Commonwealth of Pennsylvania v. Girard Trust Company, No.

162 Commonwealth Docket, 1933, judgment is hereby directed to be entered in favor of the Commonwealth and against the defendant in the sum of $1801.03, less, however, the allowance of costs to the said Schuylkill Trust Company of $344 fixed by the mandate of the Supreme Court of the United States, unless exceptions be filed within the time limited by law.

Wm. M. Hargest, P. J.

[fol. 146] In Court of Common Pleas of Dauphin County

Opinion Upon Remittitur

By the Court:

This case involves the settlement by the accounting officers of the tax on shares of the appellant company for the year ending December 31, 1930. Judgment was entered by this court against the defendant (38 Dauph. 22), which was affirmed by the Supreme Court of Pennsylvania (315 Pa. 429), but reversed by the Supreme Court of the United States November 11, 1935, 296 U. S. 113. The order of the Supreme Court is as follows: "The judgment must be reversed and the cause remanded for further proceedings not inconsistent with this opinion."

The questions involved were: 1. What deduction should be made because of the ownership by the defendant of the stock of the Philadelphia National Bank and of United States securities? 2. Is the defendant entitled to have deducted from the settlement the taxable value of all its shares which are held by persons or corporations resident and domiciled in other states of the United States?

In the judgment of this court and of the Supreme Court of Pennsylvania, a proportionate deduction was allowed for the ownership by the appellant in the shares of stock of the Philadelphia National Bank, and no deduction was allowed for the ownership of United States securities. The [fol. 147] Supreme Court of the United States held that that conclusion amounted to a discrimination against the stock of the national bank and the United States securities, and that the Acts of July 11, 1923, P. L. 1071, May 7, 1927, P. L. 853, and April 25, 1929, P. L. 673, amending the Act of June 13, 1907, P. L. 640, were unconstitutional as "construed and applied by the Department and the courts" in the settlement in this case.

In order to ascertain the precise contention of the parties as to what judgment should be entered under the mandate of the United States Supreme Court, a petition was presented to this court by the Commonwealth asking that judgment be entered under the Act of 1907 without allowing any deductions. A rule was granted thereon. The defendant, however, expended considerable energy in demurring to the rule and in preparation of a brief in sustaining the demurrer, raising the question that the court had no jurisdiction to enter judgment for a tax upon this petition and rule. The case, however, was argued on the merits, and inasmuch as we have the contentions of the parties now submitted to us it is not necessary to determine the matter upon the petition and rule.

The contention of the defendant is that judgment should be entered in favor of the defendant, because if the amending acts are unconstitutional the Act of 1907 itself is also unconstitutional.

At the time this case was re-argued, the case of Commonwealth of Pennsylvania v. Girard Trust Company, No. 162 Commonwealth Docket 1933, was also argued. It involves [fol. 148] all of the questions involved in the instant case. Counsel for the defendant in that case contended that neither the position of the Commonwealth to enter judgment under the Act of 1907 without any deductions, nor the position of the defendant to enter judgment for it because the Act of 1907 itself is unconstitutional, was sound, but that the decision of the Supreme Court of the United States only held the amending acts "as construed and applied" in the instant case to be unconstitutional, and that the amending acts could be so construed and applied as to sustain all of them.

An examination of the record in the Supreme Court of the United States shows that no assignment of error attacks the constitutionality of these amending acts without reference to their application. Every assignment of error attacks the acts as "construed and applied" in the settlement in this case. The Supreme Court of the United States also stated the contention as follows: "The appellant's contention is that the act as so construed and applied by the Department and the courts discriminates against United States Government bonds, bonds of Federal instrumentalities, and national bank stocks included in the appellant's assets."

We are bound to place such a construction upon a statute as will sustain its constitutionality, if it is susceptible of such construction. We do not regard the mandate of the Supreme Court of the United States as definitely determining that these amending acts are unconstitutional and worthless as so much waste paper. We are of opinion that the [fol. 149] way is still open to the Pennsylvania courts to limit their application so that they will be free from any discrimination against United States securities or the shares of national banks.

In the opinion in the case of Commonwealth of Pennsylvania v. Girard Trust Company, No. 162 Commonwealth Docket 1933, filed this day, we have demonstrated that such a limitation can be applied to the amending acts so as to sustain them. Our conclusion is that if a full deduction is made for the investment in the shares of national banks and a full deduction is made for the investment of the shares of United States securities, when it is shown that those securities have been purchased out of capital, surplus or undivided profits, and a proportionate deduction is made for United States securities when it is not shown that they have been purchased out of capital, surplus and undivided profits, there would be no unconstitutional application of these amending statutes. There is no evidence in the instant case that any of the United States securities were purchased out of capital, surplus or undivided profits.

In the case of Commonwealth v. Provident Trust Co., 40 Dauph. 146, 41 Dauph. 1, affirmed in 319 Pa. 385, we determined that, in ascertaining the taxable value of the shares of trust companies, the following formula should be applied:

1. The full market value of all securities must be deducted, if they be wholly investments of capital, surplus and undivided profits. Otherwise a proportionate deduction is to be made.

2. Where a proportionate deduction is to be made it should be according to the following formula:

[fol. 150] (a) The numerator to consist of the capital, surplus and undivided profits determined by the book values, less the book value of those shares, if any, for which a full deduction has been made.

(b) The denominator to consist of the book value of permanent investments, less the book value of those shares, if any, for which the full deduction has been made.

(c) The multiplicand to be the book value of the shares which are apportioned.

(d) The result thus obtained to be increased or decreased by the amount of appreciation or depreciation of the shares which are apportioned.

We see no reason for departing from this formula in the instant case. It must be amplified by allowing a full deduction for national bank shares.

2. The defendant contends that the taxable value of all its shares which are held by persons or corporations resident or domiciled in other states of the United States should be deducted in arriving at the settlement.

Inasmuch as we have decided in the case of Commonwealth v. Provident Trust Company, supra, and in this case that it is not entitled to such deduction, the tax being a tax on shares, and both of those cases having been affirmed by the Supreme Court of Pennsylvania, (and while the question was raised in the Supreme Court of the United States it was not passed upon), we are still bound to fol- [fol. 151] low the decision of the Supreme Court of Pennsylvania and we, therefore, conclude that the defendant is not entitled to such deductions.

Conclusions of Law

1. In the enactment of the Acts of June 13, 1907, P. L. 640, July 11, 1923, P. L. 1071, May 7, 1927, P. L. 853, and April 25, 1929, P. L. 673, the legislature intended to impose a tax upon the shares of stock of trust companies by adding together the value of the capital, surplus and undivided profits and deducting therefrom the full value of shares of stock of national banks and of Federal reserve banks, and so much thereof as is invested in the shares of stock of other corporations liable to or relieved from a tax on capital stock or shares or in securities issued by the United States Government, its agencies, instrumentalities or dependencies.

2. The acts above referred to must be construed so as to provide that, in computing the taxable value of the shares of stock of a trust company, the deductions expressly provided for by said acts should be made, and that such other deductions should be made as are necessary to avoid dis-

crimination in favor of the classes of securities specified therein and against the shares of stock of national banks or federal reserve banks or against securities issued by the United States Government, its agencies, instrumentalities or dependencies, in order that the intention of the legislature may be carried into effect, and conflict with the statutes and Constitution of the United States may be avoided.

[fol. 152] 3. The acts above referred to, as they have been construed and applied by the taxing officers of the Commonwealth in the settlement of the tax against the appellant, are unconstitutional and void, but those statutes, when so construed and applied as to avoid any discrimination against securities of the United States, its agencies, instrumentalities and dependencies and of national banks, are constitutional.

4. In computing the taxable value of the shares of the appellant, the full reported market value of the shares of stock of the Philadelphia National Bank owned by appellant should be deducted from its capital, surplus and undivided profits, as the same are determined from the market value of its assets.

5. By reason of the ownership of the appellant of shares of stock of other corporations which are liable to pay a tax on their capital stock or shares, and of securities issued by the United States Government or its agencies, instrumentalities or dependencies, which securities have not been shown to consist entirely of investments of capital, surplus and undivided profits of the appellant, it is entitled, in computing the taxable value of its shares, to have deducted from its capital surplus and undivided profits, as the same are determined from the market value of its assets, a proportion of the value of all such securities, as determined by the following formula:

(a) The numerator to consist of the capital, surplus and undivided profits, determined by the book value of the assets, less the book value of those securities for which a full deduction has been made; (b) the denominator to consist of [fol. 153] the book value of the permanent investments, less the book value of those securities, for which a full deduction has been made: (c) such fraction to be multiplied by the book value of the securities which are to be apportioned

(d) the result thus obtained to be increased or decreased by the amount of appreciation or depreciation in the value of the securities which are apportioned.

6. The situs of the shares of stock of a trust company for the purpose of taxation is the domicile of the company.

7. The appellant is not entitled to have deducted in the settlement of the taxable value of its shares those shares which are held by persons or corporations resident or domiciled outside of the State of Pennsylvania.

8. Judgment must be entered in favor of the Commonwealth and against the defendant.

From what we have said in this opinion and in the opinion in the case of Commonwealth of Pennsylvania v. Girard Trust Company, No. 162 Commonwealth Docket, 1933, we conclude that for the purpose of taxation the following is a correct

[fol. 154] Statement

Capital Stock, Surplus and Undivided Profits (book value)		$441,667
Appreciation		25,247
Capital, Surplus and Undivided Profits (market value)		$466,914
Less:		
A. Full deduction for shares of National Banks	$20,202	
B. Proportionate deduction for United States Securities and exempt shares of stock $\frac{446,712}{3,735,680} \times 286,944 =$	34,318	54,520
Taxable Value of Capital Stock		$412,394
Tax on same at 5 mills	$2,061.97	
Amount paid on account	570.43	
Balance due the Commonwealth	1,491.54	
Interest from April 8, 1933	223.73	
Total	1,715.27	

Statement—Continued

Attorney General's Commission of 5%	85.76
Total	$1,801.03
Less the costs allowed to the appellant in the mandate of the Supreme Court of the United States	344.00
	$1,457.03

[fol. 155] For the reasons given in this opinion and in the opinion in the case of Commonwealth of Pennsylvania v. Girard Trust Company No. 162 Commonwealth Docket, 1933, filed herewith, we directed judgment to be entered as above indicated April 20, 1936.

Wm. M. Hargest, P. J.

IN COURT OF COMMON PLEAS OF DAUPHIN COUNTY

No. 162, Commonwealth Docket, 1933

COMMONWEALTH OF PENNSYLVANIA

v.

GIRARD TRUST COMPANY

OPINION

By the COURT:

This case comes before us upon an appeal from the resettlement by the accounting officers of a tax on shares, in the sum of $100,838.58, made December 14, 1932 for the tax year 1929. On October 10, 1930, a settlement was made against the defendant for $96,942.75, on account of which the appellant paid into the State Treasury November 28, 1930, $70,000.

This case was heard by the court November 1, 1933. Its disposition has been delayed because it involved the same questions which were raised in the case of Commonwealth v. Provident Trust Company, in which we filed an opinion (40 Dauph. 146), and a subsequent opinion on exceptions (41 Dauph. 1), which was affirmed by the Supreme Court of Pennsylvania, (319 Pa. 385), and also because it involved [fol. 156] some of the same questions which were involved

in the case of Commonwealth v. Schuylkill Trust Company, 38 Dauph. 22, 315 Pa. 429, 173 A. 319, which was decided by the Supreme Court of the United States November 11, 1935, 296 U. S. 113.

A stipulation was filed submitting the case to trial by the court without the intervention of a jury, pursuant to the Act of April 22, 1874, P. L. 109.

Appeals to this court from tax settlements are heard de novo, Art. XI, Sec. 1104, of the "Fiscal Code" of April 9, 1929, P. L. 343, 72 P. S. 1104.

We have found the facts in answer to requests of the Commonwealth and the defendant, and it is not necessary to repeat them here.

Primarily, four important questions are involved in this case: 1. What deduction, if any, should be made because of the ownership by defendant of securities of the United States or of Federal agencies and shares of stock of national banks? 2. Should a proportionate deduction be made by reason of the ownership of shares of stock of other corporations, and, if so, how shall the deduction be computed? 3. Are the shares of stock of the defendant company which are held by non-resident individuals or by foreign corporations taxable? 4. Are the shares of stock of defendant company held by charitable, religious, educational, and non-profit corporations taxable?

1. In Schuylkill Trust Company v. Pennsylvania, 296 U. S. 113, the Supreme Court of the United States had [fol. 157] before it the Act of June 13, 1907, P. L. 640, as amended by the Acts of July 11, 1923, P. L. 1071, May 7, 1927, P. L. 853, and April 25, 1929, P. L. 673. The settlement in that case was arrived at by allowing a proportionate deduction of the value of the shares of the Philadelphia National Bank owned by the Trust Company, but allowing no deduction whatever on account of United States securities. The company contended that, in arriving at the taxable value of its shares, both of these assets should have been deducted at their full value because the tax is a tax upon property and not upon shares; that the United States securities were therefore not subject to tax, and the national banks having already been taxed under the manner provided by R. S. 5219 and Pennsylvania Statute of July 15, 1897, P. L. 292, it followed that under the statute requiring the deduction of the shares of other corporations

liable to, or relieved from, taxation, the failure to deduct United States securities and shares of national banks resulted in discrimination against the latter.

The majority of the Supreme Court of the United States held that the statute, "as construed and applied" in the tax settlement, discriminated against the United States securities and the shares of national banks, and was, as thus applied, invalid. The order was: "The judgment must be reversed and the cause remanded for further proceedings not inconsistent with this opinion." The minority of the Supreme Court of the United States held that the tax was a tax on shares and therefore no deduction of United States securities was required; that there was no unfriendly discrimination against United States securities in [fol. 158] the application of the act, but that the shares of stock of the national bank owned by the appellant, having already been taxed, should not be included in the valuation of the shares of the Trust Company. The minority would have modified the judgment by directing a deduction from the assessment of the value of the Trust Company shares as represented by the shares of the Philadelphia National Bank.

The important question before us is the proper construction of the mandate of the Supreme Court to proceed with the case in a way not inconsistent with its opinion.

The Schuylkill Trust Company case was again argued before us along with this case, and three contentions are before us. (a) The Schuylkill Trust Company insists that if these amending acts are unconstitutional the original Act of 1907, which contains the same discrimination, is also unconstitutional and that judgment must be entered for the defendant. (b) The Commonwealth contends that the second proviso of the Act of 1907 is, under the opinion of the Supreme Court of the United States, unconstitutional, but that the act stands without that proviso, and judgment should be entered under the Act of 1907 in favor of the Commonwealth without any deduction whatever. (c) This appellant, the Girard Trust Company, contends that under the opinion of the Supreme Court of the United States not only the Act of 1907, but the amendments of 1923, 1927 and 1929, may be so construed and applied as to make them all constitutional.

The act of 1907 provided for a tax upon the shares of trust companies. It required reports on or before the 20th [fol. 159] of June of each year and imposed upon the Auditor General the duty of assessing the shares by "adding together the amount of capital stock paid in, the surplus and undivided profits, and dividing the amount by the number of shares." The act contains what we shall call the second proviso, permitting any trust company to pay the tax into the State Treasury on or before the 1st of March of each year. In that event the company first ascertained such tax without previous assessment by the Auditor General as follows:

"by adding together so much of the capital stock paid in, the surplus, and undivided profits *as is not invested in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax or tax on shares,* (Italics ours) * * * and so much of the capital stock, surplus, profits, and deposits of such company as shall not be invested in real estate, shall be exempt from all other taxation under the laws of this Commonwealth."

The Act of 1923 changed the time for making the report from June 20 to the last day of February and fixed the tax year as ending December 31, preceding, and extended the exemption, which was given under the Act of 1907, to those corporations which paid prior to March 1st, to all trust companies. It will be noted that the Act of 1923 made no other pertinent change in the Act of 1907 except to extend the exemption to corporations regardless of when the tax was paid. The Act of 1927 extended the exemption from taxation as indicated in the underscoring, to:

"So much of the amount of capital stock paid in, the surplus, and undivided profits as is not invested in the [fol. 160] shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, *or relieved from the payment of the capital stock tax* or tax on shares."

The Act of 1929 made no change in the substantive parts — the previous amendments. It simply adapted the Act of 1907 and the amendments to fit into the new structure of the State Government imposing the duties upon the Department of Revenue which were theretofore imposed upon the Auditor General.

What then is the situation under the opinion of the Supreme Court of the United States? That great Court is in the habit of saying what it means. If it intended to categorically declare the acts amending the Act of 1907 unconstitutional without qualification, would it have remanded the cause "for further proceedings not inconsistent with this opinion?" As the case was presented to the court it was not contended that these acts were unconstitutional as so much waste paper upon the statute books. The assignments of error in the Supreme Court of the United States attacking the statutes use the language "as construed and applied" or "in that it (the Commonwealth) construed and applied" the act unconstitutionally.

The first sentence of the opinion of the Supreme Court of the United States says:

"The appellant, a trust company, • • • challenges a statute of the state as construed and applied in the assessment of a tax for the year 1930, denominated a tax on shares. [fol. 161] • • • The appellant's contention is that the act as so construed and applied by the Department and the courts, discriminates against United States Government bonds, bonds of Federal instrumentalities and national bank stocks included in the Appellant's assets."

The contention of the Commonwealth, answering the argument of the appellant, was that the settlement was valid. We are therefore of opinion that the judgment of the Supreme Court of the United States in the Schuylkill Trust Company case does not preclude us from an inquiry as to whether the amending acts may be so construed and applied as to sustain their constitutionality.

It is trite to say that the court must, if possible, construe and apply a statute so as to sustain its constitutionality.

The opinion of the Supreme Court of the United States designates the Act of 1907 as a "true tax on shares and not a tax on assets of trust companies." But in copying the provisions of the statute in the margin it omitted that provision which permitted payment of the tax by deducting so much of the value "of the capital stock paid in, the surplus, and undivided profits as is not invested in shares of stock of corporations liable to pay a capital stock tax or tax on shares." The language of the opinion of the Supreme Court of the United States is, in part:

"It will be observed that by the amendments to the Act [fol. 162] of 1907 the measure of the tax is not in any sense the value of the shares as such, but a value reflected by *so much* of the net assets as is not represented by Pennsylvania corporations already taxed or exempt from tax."

If this extract from the opinion of the Supreme Court of the United States had stopped with the words "already taxed" it would be an accurate description of the Act of 1907 itself, insofar as it applied to those trust companies which paid the tax before March 1st; but the statute applied to all trust companies because it gave the right to all trust companies to pay the tax before March 1st, and thus there was the right in all trust companies to have a tax assessed only on "so much of the net assets as is not represented by shares of Pennsylvania corporations already taxed." The only things the amendments have done to the Act of 1907 are to extend the exemption so as to exclude not only the assets of the shares of corporations already taxed but also those which are "exempt from tax" and to extend that exemption to all corporations without regard to the time when the payment of the tax is made.

We cannot interpret the opinion of the Supreme Court of the United States in the Schuylkill Trust Company case as a positive mandate to us to enter judgment for the defendant in this case.

The question, therefore, is whether we can construe the amending acts of the Act of 1907 in a way that will sustain their constitutionality which will be not inconsistent with the opinion of the Supreme Court of the United States. The [fol. 163] very thorough argument and the very researchful brief of counsel for the defendant here has convinced us that the whole history of Pennsylvania tax legislation, and its interpretation for three quarters of a century, demonstrates that this can be done.

The interpretation of the statutes imposing the Capital Stock Tax, the Corporate Loans Tax, the Tonnage Tax, Gross Receipts Tax, Collateral Inheritance Tax, Direct Inheritance Tax, and Mercantile License Tax, all show that it has been the policy of the Legislature of Pennsylvania, at least since 1840, to make the language of taxing statutes broad so as to include everything that could be properly included, rather than take the chance of cataloging numerous exceptions to the otherwise broad language, and

thereby possibly fail to enumerate all the necessary exceptions. The Legislature of Pennsylvania in its various sessions must be presumed to have known that when it used all-inclusive language it did it with the full knowledge that that language may be constitutionally restricted in its application rather than to attempt to legislate into the statute all necessary constitutional exceptions.

The history of the Capital Stock Tax is enlightening. The Act of June 11, 1840, P. L. 612, supplemented by the Act of April 29, 1844, P. L. 498, imposed a tax of "one-half mill on every dollar of the value of the stock of all * * * companies whatsoever," incorporated under any law of this Commonwealth.

The Trenton Bridge Company was incorporated both in New Jersey and Pennsylvania and owned a bridge across [fol. 164] the Delaware River, one-half of which was in each state. The taxing officers imposed a tax on the entire capital of the company. In the case of Pennsylvania v. Trenton Bridge Co., 9 Am. L. Reg. (O. S.) 298 (1860), Judge Pearson held:

"Although the imposition of taxes is strictissimi juris, and never to be *extended* by intendment, yet it may be *limited* by fair equitable consideration, so as not to embrace objects coming within the words, yet out of the intention of the Legislature."

He decided that the Commonwealth could tax only one half of the capital.

In the case of Commonwealth v. Standard Oil Company, 101 Pa. 119 (1882), a tax was settled under several acts imposing a tax upon the capital stock of every company incorporated under the laws of this Commonwealth or by any other state and doing business in this Commonwealth. The acts, in terms, imposed the tax on all of the capital stock and provided for no deduction. The Commonwealth in that case, as in the Schuylkill Trust Company case, contended that it was entitled to the tax under the letter of the statute without deductions. Judge Simonton held, page 132:

"These taxing acts must confine the imposition of the tax to so much of the capital stock of defendant as was, * * * represented by property and business of the defendant within the state."

The Supreme Court, speaking through Mr. Justice Paxson, said, page 146:

"To the extent that it brought its property here it is tax-[fol. 165] able, and no further. An act of assembly must have a reasonable construction. When it says 'all' horses, 'all' carriages shall be taxed, it does not mean all horses and all carriages in the state of Ohio. It refers to all such things as are within the jurisdiction of the taxing power. Regarding the words 'capital stock' in the act of assembly as the equivalent of the property and assets of the corporation, we must construe them to mean so much of the capital stock measured by the property actually brought within the state by the company in the transaction of its business."

In the case of Commonwealth v. Pennsylvania Coal Co., 41 Leg. Int. 125 (1884), precisely the same conclusion is reached in the opinion by Judge McPherson.

In the case of Commonwealth v. D. L. & W. R. R. Co., 145 Pa. 96 (1891), the Supreme Court held that so much of the capital stock of the defendant as was represented by the leasehold of another railroad located entirely outside of Pennsylvania, real estate outside of Pennsylvania, and vessels, barges and tugs built, registered and used outside of Pennsylvania, could not be taxed in Pennsylvania.

Prior to 1891 a multitude of cases sustained the same proposition: Commonwealth v. Lack. I. & C. Co., 129 Pa. 346, 356 (1889); Commonwealth v. Pennsylvania Co., 145 Pa. 266, 273, (1891); Commonwealth v. American Dredging Co., 122 Pa. 386 (1888); Pullman Palace Car Co. v. Penna., 107 Pa. 156 (1884); Pullman Palace Car Co. v. Penna., 141 U. S. 18 (1891); Commonwealth v. National [fol. 166] Transit Co., 5 Pa. C. C. 90, Note (1884); Commonwealth v. Montgomery L. & Z. Mining Co., 5 Pa. C. C. 89 (1888); Commonwealth v. Western Union Tel. Co., 15 W. N. C. 331; 17 Phila. 602 (1884); Commonwealth v. Western Union Tel. Co., 2 Dauphin 40 (1880); Commonwealth v. Westinghouse Elec. & Mfg. Co., 151 Pa. 265 (1892); Commonwealth v. Westinghouse Elec. & Mfg. Co., 151 Pa. 276 (1892); Commonwealth v. Philadelphia Company, 157 Pa. 527 (1893); Commonwealth v. Edison Elec. L. Co., 157 Pa. 527 (1893); Commonwealth v. Pullman Palace Car Co., 13 Pa. C. C. 54 (1893).

It was therefore settled that prior to 1891 the taxing statutes imposing a tax upon all the capital stock of domestic or foreign corporations, allowing no deductions whatever, in terms, in the language of the statutes, were not unconstitutional for that reason, but simply did not reach property outside of the state, and could not be constitutionally applied to tax such property.

By Section 20 of the Act of June 1, 1889, P. L. 420, amended by the Act of June 8, 1891, P. L. 229, it was made the duty of the president of every corporation of this Commonwealth and every corporation "of any other state • • • doing business in and liable to taxation within this Commonwealth • • • to make a report in writing." Section 21 of that act as thus amended imposed a tax "upon each dollar of the *actual* value of its *whole* capital stock of all kinds." Both Section 20 of the act which required the report, and section 21 which imposed the tax, were frequently amended down to and including 1935, but the comprehensive language requiring reports from all companies, [fol. 167] both foreign and domestic, and the imposition of a tax upon "the actual value of its *whole capital stock of all kinds*" was not in any way limited by any exceptions or provisions for deductions, notwithstanding the legislature knew that investments in property outside the state, in patent rights and in United States securities, could not be taxed. It has never been held because the Act of 1891 and its amendments did, by the language of the act, include these things, that the act itself was unconstitutional. The act has been consistently upheld, while a multitude of cases have held that it could not constitutionally reach the exempted capital in the application of the act and the settlement made under it.

In Delaware, Lack. & Western R. R. Co. v. Pennsylvania, 198 U. S. 341, reversing 206 Pa. 645, the attempt was made to tax coal which was mined in Pennsylvania and shipped into other states and stored there awaiting sale. The Supreme Court of the United States held that the coal was beyond the taxing power of the state, but did not declare the statute unconstitutional because the language was broad enough to include the coal. It declared the settlement, and not the statute, unconstitutional.

In Commonwealth v. Westinghouse Air Brake Co., 251 Pa. 12, the Supreme Court of Pennsylvania held that the state had no power to impose a tax upon so much of the

capital stock of the defendant, a domestic corporation, which was represented by property actually located in Wisconsin and Canada. The Court said:

"The difficulty is not with the law but with the facts. • • • Deductions for property permanently located out- [fol. 168] side of Pennsylvania cannot be regarded as an exemption within the meaning of the Act of June 1, 1889, P. L. 420, and its supplements. *Deductions of this character do not depend upon express legislative authority* • • •. (Italics ours) Where the valuation of capital stock includes tangible property, which is beyond the jurisdiction of the State, it is to that extent at least the taking of property without due process of law, and therefore in violation of the Fourteenth Amendment to the Federal Constitution."

There are a large number of authorities in which implied deductions have been allowed by the courts because the settlement was unconstitutional, but in no case did the court decide the Act of 1891 itself was unconstitutional in that it did not allow them in terms. See Commonwealth v. Lehigh C. & N. Co., 162 Pa. 603, 613; Commonwealth v. Provident L. & T. Co., 9 D. R. 479; Commonwealth v. Western Union Tel. Co., 29A Dauphin 245.

The same judicial attitude has been taken in the construction of the statutes imposing the Corporate Loans Tax. By Section 32 of the Act of April 29, 1844, P. L. 486, a tax was imposed on "all • • • • money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment." The Act of May 1, 1854, P. L. 535, provided that "all bonds or certificates of loans of any railroad company incorporated by this Commonwealth, be and the same shall be liable to taxation for State purposes only." By Section 3 of the Act of April 30, 1864, P. L. 218, [fol. 169] the officer of any company which paid interest to its bondholders or creditors was required to deduct the tax from the interest and pay the same to the state treasurer. In the case of Maltby v. Reading & Columbia R. R. Co., 52 Pa. 140 (1866), the Supreme Court of Pennsylvania held that the proper officer of the company was required to deduct the tax whether the holder was a resident or non-resident, but this was reversed by the case of State Tax on Foreign Held Bonds, 15 Wall. 300 (1872).

When the question arose as to whether all the bonds of a railroad which was incorporated and operating in several states, including Pennsylvania, were taxable, the courts held that all the bonds should not be taxed, but that the entire bonded indebtedness should be apportioned on a mileage basis, notwithstanding the statute, in terms, taxed all bonds. Pitts. Ft. W. & Chicago Ry. Co. v. Commonwealth, 66 Pa. 73.

Section 1 of the Act of June 30, 1885, P. L. 193, imposed a tax in language similar to that above quoted from the Act of 1844, and Section 4 of that act imposed the duty upon the treasurer of every domestic and foreign corporation doing business in this Commonwealth to assess and deduct the tax when paying the interest to residents of this Commonwealth, but it was said in the case of N. Y., L. E. & W. R. R. Co. v. Pennsylvania, 153 U. S. 628, 645, reversing 150 Pa. 234 and 145 Pa. 57:

"It assumes to do what the State has no authority to do, compel a foreign corporation to act, *in the State of its* [fol. 170] *creation,* as an assessor and collector of taxes due in Pennsylvania from residents of Pennsylvania."

The court in that case held that the state could not constitutionally impose that duty upon the foreign treasurer although the language of the act was broad enough to do it, but the act itself was not declared unconstitutional.

To the same effect are D. & H. Canal Co. v. Pennsylvania, 156 U. S. 200; Commonwealth v. Barrett Mfgr. Co., 246 Pa. 301; Commonwealth v. N. Y. C. & H. R. R. Co., 14 Dauphin 68; Commonwealth v. Hershey Creamery Co., Dauphin (C. P.) No. 150 Commonwealth Docket 1935 (March 9, 1936).

This Commonwealth for a while had a tax known as the Tonnage Tax, imposed by the Act of August 25, 1864, P. L. 988, which, in terms, levied a tax upon each ton of freight carried from the state to other states or foreign countries, or brought into the state from outside. In the case of State Freight Tax, 15 Wall. 232, the Supreme Court of the United States did not strike down the whole act as unconstitutional, but concluded (P. 282):

"The Act * * * so far as it applies to articles carried through the State, or articles taken up in the State and

carried out of it, or articles taken up without the State and brought into it, is unconstitutional and void."

The same consistent construction has been adhered to in the cases involving the Gross Receipts Tax, first im- [fol. 171] posed by the Act of February 23, 1866, P. L. 82, upon "every railroad, canal and transportation company." This language was all inclusive, but the Supreme Court of the United States, in State Tax on Railway Gross Receipts, 15 Wall. 284, held that it could not be imposed upon the receipts from freight transported in interstate commerce, although the language was broad enough to include it. The Supreme Court, however, did not strike down the act.

The Acts of March 20, 1877, P. L. 6, and June 7, 1879, P. L. 112, imposed a gross receipts tax upon every steamboat company and transportation company "engaged in the business of transporting freight or passengers." Although the act imposed a tax on all gross receipts, the Supreme Court of the United States held that it could not reach either the receipts from property or passengers transported in interstate commerce. State Freight Tax, 15 Wall. 232; Phila. & Southern Steamship Co. v. Pennsylvania, 122 U. S. 326. In the State Freight Tax case the Supreme Court of the United States said (340): The law might be valid as to one class, and unconstitutional as to the other.

See also Commonwealth v. D. & H. Canal Co., 4 Dauphin 154; Commonwealth v. N. Y. L. E. & W. R. R. Co., 21 W. N. C. 410; 22 W. N. C. 525; Commonwealth v. D. L. & W. R. R. Co., 4 Dauphin 192; Commonwealth v. L. V. R. R. Co., 4 Dauphin 174.

The treatment of the Collateral Inheritance Tax is consistent with that heretofore discussed. That tax was imposed upon:

"All estates • • • situated within this state • • • and all such estates situated in another state, territory, or [fol. 172] country, when the person or persons dying seised thereof shall have their domicile within this commonwealth."

In Bittinger's Estate, 129 Pa. 338, 345, the court held that the tax could not be imposed upon real estate in Maryland, but did not hold the act unconstitutional.

The Direct Inheritance Tax of June 20, 1919, P. L. 521, provides:

"A tax * * * is hereby imposed upon the transfer of any property, real or personal * * * when the transfer is by will or by the intestate laws of this Commonwealth, * * * whether the property be situated within this Commonwealth or elsewhere."

It has, however, been held that no real estate or tangible property located outside the State can be taxed under the act. Frick v. Pennsylvania, 268 U. S. 473; Robinson's Estate, 285 Pa. 308; Paul's Estate, 303 Pa. 330.

So also has the Mercantile License Tax received similar treatment. The Act of May 2, 1899, P. L. 184, imposes upon the vendors of merchandise a tax "on each dollar of the whole volume, gross, of business transacted annually." In the case of Crew Levick Company v. Pennsylvania, 245 U. S. 292, a tax was imposed upon $430,000 worth of merchandise sold by the appellant and delivered from its warehouse in Philadelphia to customers in foreign countries. The Supreme Court of the United States held that the "*imposition* of the tax was unconstitutional because the [fol. 173] sale was in interstate commerce," but the court did not strike down the whole act, and the statute is still in the statute books and enforced.

The Commonwealth argues that these cases are to be distinguished because they show that the settlements under the various acts were attempts to reach property not within the jurisdiction of the Commonwealth and that the situation before us is quite different so far as the Act of 1907 is concerned, because the Legislature was dealing with property wholly within its jurisdiction and that, when the Legislature authorized certain deductions and no others, it was a discrimination. We cannot follow this distinction. In the one class of cases there was an attempt to reach property beyond the physical jurisdiction while in this class the attempt was to reach property beyond the legal jurisdiction. The language of the taxing acts would have reached property outside of the State. In the application of the taxing acts, which we have reviewed, as in the trust company acts, the attempt was made to reach something beyond the grasp of the State. Instead of writing something into the Act, as is contended by the Commonwealth, if we adopt the re-

stricting provisions we are doing exactly what was done in the taxing statutes, namely, applying the language to the extent that the Constitution permits its application. We see no distinction between a case which holds that even though the statute taxes the "whole capital stock" that portion of it represented by property outside of the State cannot be taxed and a case which holds that the shares of national banks or Federal securities shall not be taxed where the statute says that shares shall not be taxed, insofar as they represent capital stock or shares of other companies [fol. 174] which have been taxed or relieved therefrom. In both cases precisely the same fundamental inquiry must be made, namely, what does the language of the statute constitutionally include? It makes no difference whether the limitation is applied to an affirmative or a negative provision such as an exemption. The principle is the same. As stated in Endlich on Interpretation of Statutes, Sec. 179:

" 'It is a safe and wholesome rule to adopt the restricted construction of a statute, when a more liberal one will bring us in conflict with the fundamental law,' indeed to regard as excepted by necessary implication from even the most express and absolute general provisions, all cases to which a statute cannot constitutionally apply."

We find no case in which the courts have struck down the statute in toto, merely because there was an attempt to reach what was constitutionally exempted where the statute was capable of a constitutional interpretation.

Certainly the Legislatures of Pennsylvania, during the large part of a century had this principle in mind in passing these statutes with all-inclusive language, not intending that they should be enforced to violate the Constitution, but intending, as the courts had led the legislature to believe, that they could be constitutionally construed to include everything which the language could constitutionally embrace.

Should the Act of 1929 and the prior amending acts of the Act of 1907, be stricken down because they did not, in [fol. 175] terms, say that federal securities should be proportionally exempted to the extent that they were paid out of capital, surplus and undivided profits, and that the investments in stock of national banks should be wholly exempted because they had been otherwise taxed? It is not

only a dangerous method but poor legislative drafting to use all-inclusive language and then, by a process of provisos or exceptions, attempt to take out of the operation of that language everything that the courts or the Constitution may have theretofore taken out. It is far better to use the inclusive language under the assumption that the well-known and well-applied principle that the statute cannot be constitutionally enforced, will be observed by the enforcing officers and the courts.

Let us assume that this statute with its comprehensive language had a proviso in it something like this: "This act shall not be construed to tax anything which is exempt under the Constitution of the State or of the United States." Would the act be any better because of such a worthless provision? Let us assume then the proviso, in terms, exempted the stock of national banks but did not refer to federal securities; should the act be stricken down merely because it, in terms, eliminated one exempted class when, in fact, it could not constitutionally reach the other?

Justice Roberts said, in the Schuylkill Trust Company Case, inter alia:

"If the burden of the tax be lifted in respect of some securities (as it is by confession from those issued by certain Pennsylvania corporations) it must necessarily fall on the [fol. 176] remaining securities owned by the company. If the tax is lifted from the shares of certain trust companies because those companies own only stocks already taxed or relieved from taxation by the state, and shares in other trust companies are taxed amongst whose assets there are United States bonds or other securities entitled to exemption because issued by federal instrumentalities which are figured in the base of the tax, it is impossible to avoid the conclusion that the law discriminates in favor of the former and against the latter solely by reason of ownership of such federal securities."

But what if the burden be lifted alike from all within the class? We are of opinion that the Supreme Court of the United States did not intend to strike down the amending statutes of the Act of 1907, but did intend to hold that "as so construed and applied by the Department and the courts" "in the assessment of a tax for the year 1930," the act is unconstitutional.

Counsel for the Schuylkill Trust Company seriously contends that there is nothing to do in that case but enter judgment for the defendant company while the Commonwealth contends that the proviso of the Act of 1907 which allows deductions is only an inducement for the trust company to pay the tax, a sort of a discount for prompt payment and therefore it does not discriminate. It is argued that the authority for the Auditor General to assess the tax contains no provision for deduction. Under the Act of 1907 a report was not required until the 20th of June, and while the Auditor General, of course, could not assess the tax until he [fol. 177] received the information in the report, permission was given to the company to assess the tax, in the first instance, and pay on or before the first of March, before the tax year ended, deducting so much of the capital stock "as is not invested in the shares of stock liable to pay a capital stock tax or tax on shares." Let us assume that 90% of all trust companies availed themselves of the deduction for prompt payment. It is difficult to conceive how this inducement could operate otherwise than as a discrimination against United States banks and Federal securities if practically the same provision in the Act of 1929 so operates.

The Commonwealth relies on the case of Commonwealth v. Mortgage Trust Company, 227 Pa., 163. But that case is not in point as to any question now before us. It simply sustained the Act of 1907. No question was raised of the invalidity of the exemption contained in the proviso.

If the amendments of 1923, 1927 and 1929 are unconstitutional in that they allow a discrimination against United States securities, then what we have called the second proviso of the Act of 1907 permits the same discrimination. We cannot escape that conclusion. That proviso allows all trust companies who paid the tax before the first of March to deduct from the taxable assets "so much of the capital, surplus and undivided profits as is not invested in shares of stock of a corporation liable to pay to the Commonwealth a capital stock tax or a tax on shares." Every trust company in the state could take advantage of that exemption. The only way that the Act of 1907 has been changed is to extend the exemption to all corporations [fol. 178] whether they pay before March 1st or not and to enlarge the exemption to the investment in the stock of cor-

porations "relieved from the payment of a capital stock tax or tax on shares" as well as to those liable to pay such tax. The conclusion is irresistible that if the amendments are wholly void because of this exemption, that portion of the Act of 1907, at least, is also wholly void, insofar as it discriminates because the language does not explicitly exempt United States securities and national banks. It is just as odious in the Act of 1907 as in the amending acts.

It might be a serious question whether we could say that this provision of the Act of 1907 is separable and severable from the remainder of the act, particularly since it carries out, pro tanto, a legislative policy to avoid double taxation asserted for more than a half a century. But courts never attempt to separate a valid from an invalid part of a statute, so long as the whole can be constitutionally construed and applied. However, in view of our conclusion that not only the Act of 1907 but the amending acts may be constitutionally interpreted, we need not determine this question.

What deduction should be made on account of the ownership of United States securities? In the case of Commonwealth v. Provident Trust Co., 40 Dauphin 146, we discussed this question at length. We there held, following the case of Commonwealth v. Hazelwood Savings & Trust Co., 271 Pa. 375, that since the tax was a tax on shares, if the appellant proved that its investment was out of capital, surplus and undivided profits it was entitled to a flat deduction. If there were no such proof it would be entitled to a propor- [fol. 179] tionate deduction. The Provident Trust Company case was affirmed in 319 Pa. 385. The dissenting opinion in the case of Schuylkill Trust Co. v. Pennsylvania agrees that the tax is a tax on shares. The Supreme Court of Pennsylvania has held the tax to be a tax on shares, and the Supreme Court of the United States, in the majority opinion, has said that it is not necessary to determine the nature of the tax. We, therefore, adhere to the conclusion that this tax is a tax on shares, and, there having been no proof that the United States securities were purchased out of capital, surplus and undivided profits, there can be only a proportionate deduction.

What deduction is to be made with reference to the shares of stock of national banks? The permission given to a state to tax the shares of stock of national banks is found in R. S. 5219 U. S. C. A., Title 12, Sec. 548, and the authority to levy the Pennsylvania tax is contained in the Act of July 15,

1897, P. L. 292. In the Schuylkill Trust Company case both the majority and the minority opinions conclude, following the case of Bank of California v. Richardson, 248 U. S. 476, that when the shares of stock of a national bank have been taxed once under the permission given by Congress, they cannot be taxed again, either directly or as part of the value of the stock or shares of another corporation. It therefore follows that the full deduction must be allowed for the investment of this appellant in the shares of national banks.

2. What deduction should be made of the assets represented by the ownership of shares of stock of other corporations? This question was fully discussed and determined in [fol. 180] the case of Commonwealth v. Provident Trust Co., 40 Dauph. 146, 41 Dauph. 1, affirmed in 319 Pa. 385. We there held:

1. If such securities were purchased out of capital, surplus and undivided profits the full market value should be deducted, otherwise a proportionate deduction should be made.

2. Where the proportionate deduction is made the following formula should be applied:

(a) The numerator to consist of capital, surplus and undivided profits determined by the book value, less the book value of those shares, if any, for which a full deduction has been made.

(b) The denominator to consist of the book value of permanent investments less the book value of those shares, if any, for which the full deduction has been made.

(c) The multiplicand to be the book value of the shares which are apportioned.

(d) The result to be increased or decreased by the amount of appreciation or depreciation of the shares which are apportioned.

It is not necessary to add anything to the discussion and conclusion which we reached in the Provident Trust Company case.

3. Is the defendant entitled to a deduction for the value of all of its shares which are held by persons or corpora- [fol. 181] tions resident or domiciled in other states? The

Supreme Court of Pennsylvania has decided in the Schuylkill Trust Company and the Provident Trust Company cases that the appellant is not entitled to any deduction on account of shares by non-residents or by foreign corporations. The Supreme Court of the United States, although that question was raised in the Schuylkill Trust Company case, did not pass upon it. We, therefore, adhere to the decisions in the former cases. It follows that no deduction can be allowed.

4. The specifications of objection raised the question as to whether shares of the defendant company owned by charitable, religious and educational institutions are taxable. Inasmuch as the defendant has already overpaid the tax for the year in question it would not have any effect upon our judgment to allow any further deductions. Therefore it is not necessary to decide this question.

Conclusions of Law

1. In the enactment of the Acts of June 13, 1907, P. L. 640, July 11, 1923, P. L. 1071, May 7, 1927, P. L. 853, and April 25, 1929, P. L. 673, the legislature intended to impose a tax upon the shares of stock of trust companies by adding together the value of the capital, surplus and undivided profits and deducting therefrom the full value of shares of stock of national banks and of Federal reserve banks, and so much thereof as is invested in the shares of stock of other corporations liable to or relieved from a tax on capital stock or shares or in securities issued by the United States Government, its agencies, instrumentalities or dependencies.

[fol. 182] 2. The acts above referred to must be construed so as to provide that, in computing the taxable value of the shares of stock of a trust company, the deductions expressly provided for by said acts should be made, and that such other deductions should be made as are necessary to avoid discrimination in favor of the classes of securities specified therein and against the shares of stock of national banks or Federal reserve banks or against securities issued by the United States Government, its agencies, instrumentalities or dependencies, in order that the intention of the legislature may be carried into effect, and conflict with the

statutes and Constitution of the United States may be avoided.

3. The acts above referred to, as they have been construed and applied by the taxing officers of the Commonwealth in the settlement of the tax against the appellant, are unconstitutional and void, but those statutes, when so construed and applied as to avoid any discrimination against securities of the United States, its agencies, instrumentalities and dependencies and of national banks, are constitutional.

4. In computing the taxable value of the shares of the appellant the full reported market value of the shares of stock of the Central National Bank, the Philadelphia National Bank and the Federal Reserve Bank owned by appellant should be deducted from its capital, surplus and undivided profits, as the same are determined from the market value of its assets.

5. By reason of the ownership of the appellant of shares of stock of other corporations which are liable to pay a tax on their capital stock or shares, and of securities issued by [fol. 183] the United States Government or its agencies, instrumentalities or dependencies, which securities have not been shown to consist entirely of investments of capital, surplus and undivided profits of the appellant, it is entitled, in computing the taxable value of its shares, to have deducted from its capital, surplus and undivided profits, as the same are determined from the market value of its assets, a proportion of the value of all such securities, as determined by the following formula:

(a) The numerator to consist of the capital, surplus and undivided profits, determined by the book value of the assets, less the book value of those securities for which a full deduction has been made; (b) the denominator to consist of the book value of the permanent investments, less the book value of those securities, for which a full deduction has been made; (c) such fraction to be multiplied by the book value of the securities which are to be apportioned; (d) the result thus obtained to be increased or decreased by the amount of appreciation or depreciation in the value of the securities which are apportioned.

6. The situs of the shares of stock of a trust company for purpose of taxation is the domicile of the company.

7. The appellant is not entitled to have deducted in the settlement of the taxable value of its shares those shares which are held by persons or corporations resident or domiciled outside of the State of Pennsylvania.

8. The defendant having paid on account more than should have been legally settled against it for the tax year 1929, [fol. 184] according to the statement herein contained, judgment must be entered in favor of the defendant and against the Commonwealth.

Computation of Tax for the Year 1929

Capital Stock (Average for the year)		$3,645,833.00
Surplus (Average for the year)		12,729,166.00
Undivided Profits		1,469,112.00
Capital, Surplus and Undivided Profits at book value		$17;844,111.00
Appreciation		4,218,402.00
Total Capital, Surplus and Undivided Profits at market value		$22,062,513.00
Less—deductions for exempt shares of stock and United States Securities:		
A. Full deduction for shares of National Banks and Federal Reserve Bank	$877,141.00	
B. Proportionate deduction for United States securities and exempt shares of stock	11,324,752.00	
Total deductions		12,201,893.00
Taxable value of all the shares		$9,860,620.00
Tax on all shares, at 5 mills		$49,303.10
Amount paid on account		70,000.00
Balance		None

[fol. 185] This opinion is filed giving our reasons for the judgment which was entered in favor of the defendant in this case April 20, 1936.

Wm. M. Hargest, P. J.

IN COURT OF COMMON PLEAS

EXCEPTIONS OF THE SCHUYLKILL TRUST COMPANY, DEFENDANT

And Now, May 7, 1936, the Schuylkill Trust Company, defendant above named, by its attorney, John Robert Jones, excepts to the findings, the conclusions of law and the judgment directed to be entered by the learned court and specifies the following exceptions thereto:

1. The Commonwealth having presented a petition to the court praying the court to enter judgment against the defendant by the imposition of a tax under the first proviso of the Act of June 13, 1907, P. L. 640, without allowing any deductions, upon the ground that such was the mandate of the Supreme Court of the United States in the instant case, and the court upon such petition having granted a rule upon the defendant to show cause why judgment should not be entered in accordance with such prayer and the defendant having demurred to the rule, reserving the right to answer, upon the ground, inter alia, that the court had no jurisdiction to enter judgment for tax against the defendant under authority of the mandate of the Supreme Court of the United States but on the contrary under the mandate of said court it was required that judgment be entered in [fol. 186] favor of the defendant with costs, the learned court erred in not sustaining the demurrer of the defendant.

Overruled. The object of the petition has been accomplished. The Court entered judgment without the necessity of passing on the demurrer.

2. The learned court erred in that, not having sustained the demurrer filed by the defendant and having denied to the defendant the right to answer the petition of the Commonwealth and the rule issued by the court upon such petition, by the judgment which it directed to be entered against the defendant April 20, 1936, it discriminated against the

defendant and its shareholders in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

Overruled. The purpose of the petition referred to and the rule granted thereon was simply to get a concise statement of what judgment should be entered in the light of the divergent views of counsel. The defendant was accorded as full a hearing as if no petition had been presented or rule granted.

3. The learned court erred in that having prescribed the formula which it held should be applied to the defendant and which formula required a determination of the book values of the capital, surplus and undivided profits, the [fol. 187] book value of the shares of stock for which a full deduction was to be allowed, the book value of "permanent investments" and the book values of assets which the court held were exempt and non-taxable, it nevertheless entered a judgment which did not comply with such formula and without giving the defendant a hearing and an opportunity to establish the book values of such assets and "permanent investments" and to present evidence to show what portion, if any, of the assets which the court held to be exempt and non-taxable and therefore deductible were purchased out of the amount of capital stock paid in, surplus and undivided profits, though such hearing and opportunity were given other trust companies held subject to the Act of April 25, 1929, Pamphlet Laws 673, under authority of which the court directed the entry of judgment against the defendant April 20, 1936, thereby discriminating against the defendant and its shareholders in violation of Section 1 of Article IX of the Constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

Overruled. See answer to Fifth Exception.

4. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"There is no evidence in the instant case that any of the United States securities were purchased out of capital, surplus or undivided profits."

Overruled.

[fol. 188] 5. The learned court erred in that it made a tax settlement against the defendant by the application of a method of settlement in accordance with which and upon which it directed the entry of judgment against the defendant April 20, 1936 without the evidence and the findings of facts essential to the application of such method of tax settlement and the entry of such judgment, thereby discriminating against the defendant and its shareholders in violation of Section 1 of Article IX of the Constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

Overruled. This case was originally heard by this court de novo with full opportunity to present any facts affecting the amount of tax. When the case was returned under the mandate of the Supreme Court of the United States it was to enter judgment on the record, not to open the case to make a new record. The formula to be applied was settled in the case of Commonwealth v. Provident Trust Co., 40 Dau. 146; 41 Dau. 1; 319 Dau. 385.

6. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"The case, however, was argued on the merits, and inasmuch as we have the contentions of the parties now submitted to us it is not necessary to determine the matter upon the petition and rule."

Overruled.

[fol. 189] 7. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"The questions involved were: 1. What deduction should be made because of the ownership by the defendant of the stock of the Philadelphia National Bank and of United

States securities? 2. Is the defendant entitled to have deducted from the settlement the taxable value of all its shares which are held by persons or corporations resident and domiciled in other states of the United States?"

Overruled.

8. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"We are bound to place such a construction upon a statute as will sustain its constitutionality, if it is susceptible of such construction. We do not regard the mandate of the Supreme Court of the United States as definitely determining that these amending acts are unconstitutional and worthless as so much waste paper. We are of opinion that the way is still open to the Pennsylvania courts to limit their application so that they will be free from any discrimination against United States securities or the shares of national banks."

Overruled.

[fol. 190] 9. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"Our conclusion is that if a full deduction is made for the investment in the shares of national banks and a full deduction is made for the investment of the shares of United States securities, when it is shown that those securities have been purchased out of capital, surplus or undivided profits, and a proportionate deduction is made for United States securities when it is not shown that they have been purchased out of capital, surplus and undivided profits, there would be no unconstitutional application of these amending statutes."

Overruled.

10. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"• • •, in ascertaining the taxable value of the shares of trust companies, the following formula should be applied:

"1. The full market value of all securities must be deducted, if they be wholly investments of capital, surplus

and undivided profits. Otherwise a proportionate deduction is to be made.

"2. Where a proportionate deduction is to be made it should be according to the following:

"(a) The numerator to consist of the capital, surplus and undivided profits determined by the book values, less [fol. 191] the book value of those shares, if any, for which a full deduction has been made.

"(b) The denominator to consist of the book value of permanent investments, less the book value of those shares, if any, for which the full deduction has been made.

"(c) The multiplicand to be the book value of the shares which are apportioned.

"(d) The result thus obtained to be increased or decreased by the amount of appreciation or depreciation of the shares which are apportioned.

"We see no reason for departing from this formula in the instant case. It must be amplified by allowing a full deduction for national bank shares."

Overruled.

11. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"2. The defendant contends that the taxable value of all its shares which are held by persons or corporations resident or domiciled in other states of the United States should be deducted in arriving at the settlement.

"Inasmuch as we have decided in the case of Commonwealth v. Provident Trust Company, supra, and in this case that it is not entitled to such deduction, the tax being a tax on shares, and both of those cases having been affirmed by the Supreme Court of Pennsylvania, and while the question was raised in the Supreme Court of the United States [fol. 192] it was not passed upon, we are still bound to follow the decision of the Supreme Court of Pennsylvania and we, therefore, conclude that the defendant is not entitled to such deductions."

Overruled.

12. The Conclusions of Law found by the court and numbered 1, 2, 3, 4, 5, 6, 7 and 8, respectively, being interrelated and embodying the formula and method of settlement which the court holds to be the basis of the judgment which it directed to be entered against the defendant April 20, 1936, are erroneous and in violation of Section 1 of Article IX of the Constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States and are accordingly excepted to as a whole and separately.

Overruled.

13. The learned court erred in its 1st Conclusion of Law which reads as follows:

"1. In the enactment of the Acts of June 13, 1907, P. L. 640, July 11, 1923, P. L. 1071, May 7, 1927, P. L. 853, and April 25, 1929, P. L. 673, the legislature intended to impose a tax upon the shares of stock of trust companies by adding together the value of the capital, surplus and undivided profits and deducting therefrom the full value of shares of stock of national banks and of Federal reserve banks, and so much thereof as is invested in the shares of stock of other corporations liable to or relieved from a tax on cap- [fol. 193] ital stock or shares or in securities issued by the United States Government, its agencies, instrumentalities or dependencies."

Overruled.

14. The learned court erred in its 2nd Conclusion of Law which reads as follows:

"2. The acts above referred to must be construed so as to provide that, in computing the taxable value of the shares of stock of a trust company, the deductions expressly provided for by said acts should be made, and that such other deductions should be made as are necessary to avoid discrimination in favor of the classes of securities specified therein and against the shares of stock of national banks or federal reserve banks or against securities issued by the United States Government, its agencies, instrumentalities or dependencies, in order that the intention of the legislature may be carried into effect, and conflict with

the statutes and Constitution of the United States may be avoided."

Overruled.

15. The learned court, being without legislative power and being bound by the decision of the Supreme Court of Pennsylvania in the instant case filed June 30, 1934 (315 Pa. 429), erred in so much of its 3rd Conclusion of law as reads as follows:

"3. The acts above referred to, * * *, when so construed and applied as to avoid any discrimination against securities of the United States, its agencies, instrumentali-[fol. 194] ties and dependencies and of national banks, are constitutional."

Overruled.

16. The learned court, being without legislative power and being bound by the decision of the Supreme Court of Pennsylvania in the instant case filed June 30, 1934 (315 Pa. 429), erred in its 4th Conclusion of Law which reads as follows:

"4. In computing the taxable value of the shares of the appellant, the full reported market value of the shares of stock of the Philadelphia National Bank owned by appellant should be deducted from its capital, surplus and undivided profits, as the same are determined from the market value of its assets."

Overruled.

17. The learned court erred in its 5th Conclusion of Law which reads as follows:

"5. By reason of the ownership of the appellant of shares of stock of other corporations which are liable to pay a tax on their capital stock or shares, and of securities issued by the United States Government or its agencies, instrumentalities or dependencies, which securities have not been shown to consist entirely of investments of capital, surplus and undivided profits of the appellant, it is entitled, in computing the taxable value of its shares, to have deducted from its capital, surplus and undivided profits, as the same are determined from the market value of its

[fol. 195] assets, a proportion of the value of all such securities, as determined by the following formula:

"(a) The numerator to consist of the capital, surplus and undivided profits, determined by the book value of the assets, less the book value of those securities for which a full deduction has been made; (b) the denominator to consist of the book value of the permanent investments, less the book value of those securities, for which a full deduction has been made; (c) such fraction to be multiplied by the book value of the securities which are to be apportioned; (d) the result thus obtained to be increased or decreased by the amount of appreciation or depreciation in the value of the securities which are apportioned."

Overruled.

18. The learned court erred in its 6th Conclusion of Law which reads as follows:

"6. The situs of the shares of stock of a trust company for the purpose of taxation is the domicile of the company."

Overruled.

19. The learned court erred in its 7th Conclusion of Law which reads as follows:

"7. The appellant is not entitled to have deducted in the settlement of the taxable value of its shares those shares which are held by persons or corporations resident or domiciled outside of the State of Pennsylvania."

Overruled.

[fol. 196] 20. The learned court erred in its 8th Conclusion of Law which reads as follows:

"8. Judgment must be entered in favor of the Commonwealth and against the defendant."

Overruled.

21. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"From what me have said in this opinion and in the opinion in the case of Commonwealth of Pennsylvania v. Girard Trust Company, No. 162 Commonwealth Docket

1933, we conclude that for the purpose of taxation the following is a correct

"Statement

"Capital Stock, Surplus and Undivided Profits (book value)		$441,667
Appreciation		25,247
Capital, Surplus and Undivided Profits (market value)		$466,914
Less:		
A. Full deduction for shares of National Banks	$20,202	
B. Proportionate deduction for United States Securities and exempt shares of stock, $\frac{446,712}{3,735,680} \times 286,994 =$	34,318	54,520
Taxable Value of Capital Stock		$412,394
[fol. 197] Tax on same at 5 mills	$2,061.97	
Amount paid on account	570.43	
Balance due the Commonwealth	1,491.54	
Interest from April 8, 1933	223.73	
Total	1,715.27	
Attorney General's Commission of 5%	85.76	
Total	$1,801.03	
Less the costs allowed to the appellant in the mandate of the Supreme Court of the United States	344.00	
	$1,457.03"	

Sustained and judgment modified. See opinion.

22. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"For the reasons given in this opinion and in the opinion in the case of Commonwealth of Pennsylvania v. Girard

Trust Company, No. 162 Commonwealth Docket 1933, filed herewith, we directed judgment to be entered as above indicated April 20, 1936.

Wm. M. Hargest, P. J."

Sustained and judgment modified. See opinion.

23. The learned court erred in directing the following judgment to be entered:

[fol. 198] "And now, April 20, 1936, for the reasons given in an opinion hereafter to be filed in this case and in the case of Commonwealth of Pennsylvania v. Girard Trust Co. No. 162 Commonwealth Docket, 1933, judgment is hereby directed to be entered in favor of the Commonwealth and against the defendant in the sum of $1801.03, less, however, the allowance of costs to the said Schuylkill Trust Company of $344 fixed by the mandate of the Supreme Court of the United States, unless exceptions be filed within the time limited by law.

"Wm. M. Hargest, P. J."

Sustained and judgment modified. See opinion.

24. The learned court erred in not directing judgment to be entered in favor of the Schuylkill Trust Company, the defendant, and against the Commonwealth of Pennsylvania, the plaintiff, together with costs.

Overruled.

25. The learned court erred in that it held that a method of settlement described in its opinion as the method of settlement which was applied by it "In the case of Commonwealth v. Provident Trust Co., 40 Dauph. 146, 41 Dauph. 1, affirmed in 319 Pa. 385," is a method of settlement which is consistent with the opinion of the Supreme Court of the United States and complies with its mandate in the instant case.

Overruled.

[fol. 199] 26. The learned court erred in that the judgment which it directed to be entered against the defendant April 20, 1936 was determined in amount by a method of settlement which differs from the method of settlement which in its opinion it declared to be the proper method of settlement

and which it described in its opinion as the method of settlement applied in the case of Commonwealth v. Provident Trust Co., 40 Dauph. 146, 41 Dauph. 1, affirmed in 319 Pa. 385 (1935).

Overruled.

27. The learned court erred in that the judgment which it directed to be entered against the defendant April 20, 1936 was determined in amount by a method of settlement which differs from the method of settlement which was applied to other trust companies for the same and other tax years under authority of the said Act of April 25, 1929, Pamphlet Laws 673, and in the cases of the Provident Trust Company, 40 Dauph. 146, 41 Dauph. 1, and the Girard Trust Company, Court of Common Pleas of Dauphin County, No. 162, Commonwealth Docket, 1933, to both of which the court refers, thereby discriminating against the defendant and its shareholders in violation of Section 1 of Article IX of the Constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

Overruled.

[fol. 200] 28. The learned court erred in that its construction and application of the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, by the judgment directed to be entered against the defendant April 20, 1936 constitute judicial legislation amending the statute by writing into it a provision granting additional exemptions from taxation in violation of Section 1 of Article II of the Constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

Overruled.

29. The learned court erred in that the judgment which it directed to be entered against the defendant April 20, 1936 violates the opinion, judgment and mandate of the

Supreme Court of the United States, (November 11, 1935) (296 U. S. 113).

Sustained and judgment modified. See opinion.

30. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under the authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void, being in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

Overruled.

[fol. 201] 31. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under the authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void, being in violation of Clause 2 of Section 8 of Article I of the Constitution of the United States which gives the Congress of the United States power to borrow money on the credit of the United States.

Overruled.

32. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under the authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that it imposes a tax upon and discriminates against United States securities owned by the defendant in violation of Clause 2 of Section 8 of Article I of the Constitution of the United States which gives the Congress of the United States power to borrow money on the credit of the United States, Section 3701 Revised statutes of the United States, 31 U. S. C. Sec. 742, which exempts obligations of the United States from state taxation and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

Overruled.

33. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, [fol. 202] Pamphlet Laws 673, under the authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that it imposes a tax upon and discriminates against Philippine Islands bonds owned by the defendant in violation of the provisions of the Act of Congress of the United States of August 29, 1916 c. 416, 39 Stat. 548, Sec. 11, Act of Congress of the United States of July 21, 1921, c. 51, 42 Stat. 145, and Act of the Philippine Legislature Number 2940 approved February 5, 1921, Act of Congress of February 6, 1905, c. 453, 33 Stat., part 1, 689, Clause 2 of Section 8 of Article I of the Constitution of the United States which gives the Congress of the United States power to borrow money on the credit of the United States and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

Overruled.

34. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under the authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that it imposes a tax upon and discriminates against Joint Stock Land Bank bonds owned by the defendant in violation of the provisions of "The Federal Farm Loan Act" of the United States Congress of July 17, 1916, c. 245, 39 Stat. 360, Sec. 16, Sec. 26, Clause 2 of Section 8 of Article I of the Constitution of the [fol. 203] United States which gives the Congress of the United States power to borrow money on the credit of the United States and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

Overruled.

35. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamph-

let Laws 673, under authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that it has been held to authorize the deduction of assets consisting of shares of stock of Federal Reserve Banks and National Banks "flat," i. e. at their full value, from the amount of capital stock paid in, the surplus and undivided profits which is the value of the net assets, irrespective of whether or not such shares of stock were purchased out of the capital stock paid in, the surplus and undivided profits, and to authorize the apportionment of United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and a class of assets owned by the defendant and described in the statute as shares of stock of corporations liable to pay to the Commonwealth a capital stock tax or relieved from the payment of capital stock tax or tax on shares, between the amount of its capital stock paid in, the surplus and undivided profits (the value of the net assets) and the amount of its liabilities, for the purpose of determining what portion of the value of the said United States securities, Philippine Islands bonds, Joint Stock [fol. 204] Land Bank bonds and shares of stock is to be deducted from the amount of the capital stock paid in, the surplus and undivided profits (the value of the net assets) in order to determine the taxable value to which the rate of tax is to be applied and the consequent amount of tax required to be paid and for that purpose to include in the value of the defendant's total assets the full value of assets consisting of United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the said shares of stock described in the statute, the result of which is to discriminate against, to impose a tax upon and to infringe the immunity from state taxation of the said United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and to impose a tax upon the said shares of stock described in the statute. Such construction and application of the statute by the court violates Section 1 of Article IX of the Constitution of Pennsylvania, Section 1 of the Fourteenth Amendment to the Constitution of the United States and Clause 2 of section 8 of Article I of the Constitution of the United States by discriminating against the defendant and its shareholders by reason of its ownership of the said securities, bonds and shares of stock and by depriving the defendant and its shareholders of their property without due process of law and impairing the power of the Con-

gress of the United States to borrow money on the credit of the United States because under the settlement of the tax and the judgment entered against the defendant the amount of the tax settled against it was increased by reason of its ownership of United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds and by denying to the defendant and its shareholders the equal pro-
[fol. 205] tection of the laws and discriminating against such non-taxable assets and against it, the defendant, and its shareholders because of its ownership of such assets, the said court having allowed in settlements made in the cases of some trust companies which were subject to the said state statute a deduction from the value of the net assets of the full value of the shares of stock described in the statute, the full value of United States securities and obligations of federal agencies and instrumentalities and national bank shares and shares of stock of Federal Reserve Banks in order to determine the taxable value to which the rate of tax was applied, whereas, under the method of settlement and calculation of the tax applied to the defendant no such "flat" deduction was allowed of the said exempt and non-taxable assets owned by the defendant consisting of United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and exempt shares of stock described in the statute. The necessary effect and consequence of such construction of the statute and such method of settlement and calculation of the tax is that no tax is imposed in the case of trust companies the assets of which consist solely of such exempt and non-taxable shares of stock or securities and tax is imposed in cases of trust companies if any of the assets consist of United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds and settlement is made by allowing "proportionate" instead of "flat" deductions, tax liability being determined not only by the kind of assets owned by each trust company without regard to the value of the shares of stock issued by the trust company and the value of the shareholders' interest in such shares of stock but also by
[fol. 206] whether or not a "flat" or a "proportionate" deduction of the exempt and non-taxable assets is allowed.

Overruled.

36. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it directed

the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that it has been held to impose a tax upon the shares of stock issued by the defendant and other domestic trust companies as shares and upon the interest of the shareholders, both residents and non-residents of the State of Pennsylvania, in such shares and that such tax was imposed by the method of settlement which was applied in the settlement of the tax made against the defendant wherein and whereby the amount of the tax required to be paid is determined by the application of the rate of tax to a value of assets determined by deducting from the value of the total assets of the trust company the amount of its liabilities together with a portion of the value of a class of assets owned by the trust company and described in and expressly exempted by the statute as shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of a capital stock tax or tax on shares, and a portion of the value of the non-taxable United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds owned by the defendant, which portion so to be deducted is such portion of the value of such shares of stock, securities and [fol. 207] bonds as the amount of capital stock paid in, the surplus and undivided profits (the value of the net assets) less the value of assets deducted "flat" (i. e. deducted at their full value) bears to the value of the total assets, less the value of assets deducted "flat" (i.e. deducted at their full value). The result of such method of settlement of the tax made by the said court is to discriminate against and to impose a tax upon the said shares of stock described in and expressly exempted from tax by the statute and the United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds, which tax is determined by the application of the rate of tax to the portion of their value not deducted, and upon all other assets of the trust company not deducted at their full value from the value of the net assets, among which in the case of the defendant were United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and such exempt shares of stock described in and expressly exempted by the statute which were included in the value of the defendant's total assets at the value of $286,994, whereby there was a violation of Section 1 of Article IX of the Constitution of Pennsylvania and

whereby the defendant and its shareholders were deprived of their property without due process of law and had denied to them the equal protection of the laws and the power of Congress of the United States to borrow money on the credit of the United States was impaired in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States and Clause 2 of Section 8 of Article I of the Constitution of the United States.

Overruled.

[fol. 208] 37. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that under its authority the said court made a tax settlement against the defendant wherein and whereby the amount of tax required to be paid is increased by reason and on account of the defendant's ownership of non-taxable United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds and the amount of the tax is lessened in the cases of all other trust companies in proportion as such other trust companies invested in shares of stock described in the said statute as shares of stock issued by corporations liable to pay to the Commonwealth a capital stock tax or relieved from the payment of a capital stock tax or tax on shares, Federal Reserve Bank shares, National Bank shares and other assets held to be deductible "flat", i.e. at their full value, from the value of the net assets in order to determine the taxable value and consequent tax liability, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws, Clause 2 of Section 8 of Article I of the Constitution of the United States by impairing the power of Congress of the United States to borrow money on the credit of the United States and the decisions of the Supreme Court of the United States in the cases of Missouri v. Gehner, 281 U. S. 313 (1930), MacAllen Co. v. Mass., 279 U. S. 620 [fol. 209] (1929) and Bank of California v. Richardson, 248 U. S. 476 (1919).

Overruled.

38. The learned court erred in that having held that the Act of April 25, 1929, Pamphlet Laws 673, under authority of which it directed the entry of judgment April 20, 1936, authorized the deduction of assets consisting of shares of stock of Federal Reserve Banks and National Banks "flat", i. e. at their full value, from the amount of capital stock paid in, the surplus and undivided profits which is the value of the net assets, irrespective of whether or not such shares of stock were purchased out of the amount of capital stock paid in, the surplus and undivided profits, and in the tax settlement made against the defendant upon which it based such judgment having made such "flat" deduction of Philadelphia National Bank shares owned by the defendant of the value of $20,202 from the amount of the capital stock paid in the surplus and undivided profits, i. e. the value of the net assets, irrespective of whether or not they were purchased out of the amount of capital stock paid in, the surplus and undivided profits, the United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the shares of stock exempted from tax and described in the statute and owned by the defendant of the value of $286,994 were not in like manner deducted "flat", and as a consequence the said judgment discriminated against the defendant and the said Act of April 25, 1929, Pamphlet Laws 673, which was held to authorize the entry of such judgment discriminates against the defendant and all trust companies which own similar assets and are denied [fol. 210] "flat" deductions from net assets in violation of Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax and shall be levied and collected under general laws" and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

Sustained and judgment modified. See opinion.

39. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it directed the entry of judgment against the defendant April 20, 1936, is

unconstitutional and void in that as held by the said court it imposes a tax upon the shares of stock issued by the defendant and other domestic trust companies as shares and upon the interest of the shareholders, both residents and non-residents of the State of Pennsylvania, in such shares, and thereby imposes a tax upon the property of such shareholders of the defendant who were non-residents of the state and upon their property which was situate outside the state in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

Overruled.

John Robert Jones, Attorney for the Defendant.

[fol. 211] IN COURT OF COMMON PLEAS

EXCEPTIONS OF THE COMMONWEALTH OF PENNSYLVANIA PLAINTIFF, TO OPINION AND JUDGMENT

Now, this 14th day of May, 1936, the Commonwealth of Pennsylvania excepts to the opinion of the learned trial judge, and judgment directed to be entered by the court in the above entitled case, as follows:

1. The trial judge erred in his conclusion in that part of subdivision one of the "discussion" of his opinion which reads as follows:

"* * * The Supreme Court of the United States held that that conclusion amounted to a discrimination against the stock of the national bank and the United States securities, and that the Acts of July 11, 1923, P. L. 1071, May 7, 1927, P. L. 853, and April 25, 1929, P. L. 673, amending the Act of June 13, 1907, P. L. 640, were unconstitutional as 'construed and applied by the Department and the courts' in the settlement in this case."

Overruled.

2. The trial judge erred in his conclusion in that part of subdivision one of the "discussion" of his opinion which reads as follows:

"* * * We do not regard the mandate of the Supreme Court of the United States as definitely determining that these amending acts are unconstitutional and worthless as so much waste paper. We are of opinion that the way is still open to the Pennsylvania courts to limit their application so that they will be free from any discrimination against [fol. 212] United States securities or the shares of national banks."

Overruled.

3. The trial judge erred in his conclusion in that part of subdivision one of the "discussion" of his opinion which reads as follows:

"* * * Our conclusion is that if a full deduction is made for the investment in the shares of national banks and a full deduction is made for the investment of the shares of United States securities, when it is shown that those securities have been purchased out of capital, surplus or undivided profits, and a proportionate deduction is made for United States securities when it is not shown that they have been purchased out of capital, surplus and undivided profits, there would be no unconstitutional application of these amending statutes. * * *"

Overruled.

4. The trial judge erred in his conclusion in that part of subdivision one of his opinion in Commonwealth v. Girard Trust Company, No. 162 Commonwealth Docket, 1933, referred to in this case which reads as follows:

"The question, therefore, is, whether we can construe the amending acts of the Act of 1907 in a way that will sustain their constitutionality which will be not inconsistent with the opinion of the Supreme Court of the United States. * * *"

Overruled.

5. The trial judge erred in his conclusion in that part of subdivision one of his opinion in Commonwealth v. Girard [fol. 213] Trust Company, No. 162 Commonwealth Docket, 1933, referred to in this case which reads as follows:

"* * * In the application of the taxing acts, which we have reviewed, as in the trust company acts, the attempt was made to reach something beyond the grasp of the State. Instead of writing something into the Act, as is contended by the Commonwealth, if we adopt the restricting provisions we are doing exactly what was done in the taxing statutes, namely, applying the language to the extent that the Constitution permits its application. We see no distinction between a case which holds that even though the statute taxes the 'whole capital stock' that portion of it represented by property outside of the State cannot be taxed and a case which holds that the shares of national banks or Federal securities shall not be taxed where the statute says that shares shall not be taxed, insofar as they represent capital stock or shares of other companies which have been taxed or relieved therefrom. * * *"

Overruled.

6. The trial judge erred in his conclusion in that part of subdivision one of his opinion in Commonwealth v. Girard Trust Company, No. 162 Commonwealth Docket, 1933, referred to in this case which reads as follows:

"* * * We are of opinion that the Supreme Court of the United States did not intend to strike down the amending statutes of the Act of 1907, but did intend to hold that as so construed and applied by the Department and the [fol. 214] courts 'in the assessment of a tax for the year 1930,' the act is unconstitutional."

Overruled.

7. The trial judge erred in his conclusion in that part of subdivision one of his opinion in Commonwealth v. Girard Trust Company, No. 162 Commonwealth Docket, 1933, referred to in this case which reads as follows:

"If the amendments of 1923, 1927 and 1929 are unconstitutional in that they allow a discrimination against United States securities, then what we have called the second proviso of the Act of 1907 permits the same discrimination. We cannot escape that conclusion. * * *"

Overruled.

8. The trial judge erred in his conclusion in that part of subdivision one of his opinion in Commonwealth v. Girard Trust Company, No. 162 Commonwealth Docket, 1933, referred to in this case which reads as follows:

"* * * The conclusion is irresistible that if the amendments are wholly void because of this exemption, that portion of the Act of 1907, at least, is also wholly void, insofar as it discriminates because the language does not explicitly exempt United States securities and national banks. It is just as odious in the Act of 1907 as in the amending acts."

Overruled.

9. The trial judge erred in his first conclusion of law which reads as follows:

[fol. 215] "1. In the enactment of the Acts of June 13, 1907, P. L. 640, July 11, 1923, P. L. 1071, May 7, 1927, P. L. 853, and April 25, 1929 P. L. 673, the legislature intended to impose a tax upon the shares of stock of trust companies by adding together the value of the capital, surplus and undivided profits and deducting therefrom the full value of shares of stock of national banks and of Federal reserve banks, and so much thereof as is invested in the shares of stock of other corporations liable to or relieved from a tax on capital stock or shares or in securities issued by the United States Government, its agencies, instrumentalities or dependencies.

Overruled.

10. The trial judge erred in his second conclusion of law which reads as follows:

"2. The acts above referred to must be construed so as to provide that, in computing the taxable value of the shares of stock of a trust company, the deductions expressly provided for by said acts should be made, and that such other deductions should be made as are necessary to avoid discrimination in favor of the classes of securities specified therein and against the shares of stock of national banks or federal reserve banks or against securities issued by the United States Government, its agencies instrumentalities or dependencies, in order that the intention of the legisla-

ture may be carried into effect, and conflict with the statutes and Constitution of the United States may be avoided."

Overruled.

[fol. 216] 11. The trial judge erred in his third conclusion of law which reads as follows:

"3. The acts above referred to, as they have been construed and applied by the taxing officers of the Commonwealth in the settlement of the tax against the appellant, are unconstitutional and void, but those statutes, when so construed and applied as to avoid any discrimination against securities of the United States, its agencies, instrumentalities and dependencies and of national banks, are constitutional."

Overruled.

12. The trial judge erred in his fourth conclusion of law which reads as follows:

"4. In computing the taxable value of the shares of the appellant, the full reported market value of the shares of stock of the Philadelphia National Bank owned by appellant should be deducted from its capital, surplus and undivided profits, as the same are determined from the market value of its assets."

Overruled.

13. The trial judge erred in his fifth conclusion of law which reads as follows:

"5. By reason of the ownership of the appellant of shares of stock of other corporations which are liable to pay a tax on their capital stock or shares, and of securities issued by the United States Government or its agencies, instrumentalities or dependencies, which securities have not been shown to consist entirely of investments of capital, sur-[fol. 217] plus and undivided profits of the appellant, it is entitled, in computing the taxable value of its shares, to have deducted from its capital, surplus and undivided profits, as the same are determined from the market value of its

assets, a proportion of the value of all such securities, and determined by the following formula:

"(a) The numerator to consist of the capital, surplus and undivided profits, determined by the book value of the assets, less the book value of those securities for a which a full deduction has been made; (b) the denominator to consist of the book value of the permanent investments, less the book value of those securities, for which a full deduction has been made; (c) such fraction to be multiplied by the book value of the securities which are to be apportioned; (d) the result thus obtained to be increased or decreased by the amount of appreciation or depreciation in the value of the securities which are apportioned."

Overruled.

14. The trial judge erred in the computation of the tax for the year 1930, which is as follows:

"Statement

Capital Stock, Surplus and Undivided Profits (book value)		$441,667
Appreciation		25,247
Capital Surplus and Undivided Profits (market value)		$466,914
Less:		
A. Full deduction for shares of National Banks	$20,202	
[fol. 218]		
B. Proportionate deduction for United States Securities and exempt shares of stock $\frac{446,712}{3,735,680} \times 286,994 =$	34,318	54,520
Taxable Value of Capital Stock		$412,394
Tax on same at 5 mills	$2,061.97	
Amount paid on account	570.43	
Balance due the Commonwealth	$1,491.54	
Interest from April 8, 1933	223.73	
Total	$1,715.27	

Attorney General's Commission of 5%	85.76
Total	$1,801.03
Less the costs allowed to the appellant in the mandate of the Supreme Court of the United States	344.00
	$1,457.03"

Now January 22, 1937, this exception is sustained and the statement is revised in our opinion of this date.

15. The trial judge erred in entering the following judgment:

"And now, April 20, 1936, for the reasons given in an opinion hereafter to be filed in this case and in the case of Commonwealth of Pennsylvania v. Girard Trust Company, No. 162 C. D. 1933, judgment is hereby entered in [fol. 219] favor of the Commonwealth and against defendant in the sum of $1801.03 less however the allowance of costs to Schuylkill Trust Company of $344 fixed by the mandate of the Supreme Court of the United States, unless exceptions be filed within time limited by law."

Manuel Kraus, Deputy Attorney General for the Commonwealth of Pennsylvania.

IN COURT OF COMMON PLEAS

EXCEPTIONS OVERRULED AND FINAL JUDGMENT

Judgment is entered in our opinion filed January 22, 1937. All the foregoing exceptions other than 14 and 15 are overruled as of this date.

Wm. M. Hargest, P. J.

IN COURT OF COMMON PLEAS

ADDITIONAL EXCEPTIONS OF THE SCHUYLKILL TRUST COMPANY DEFENDANT

And Now, May 18, 1936, the Schuylkill Trust Company, defendant above named, by its attorney, John Robert Jones,

excepts to the findings, the conclusions of law and the judgment directed to be entered by the learned court and [fol. 220] specifies the following exceptions thereto in addition to the exceptions heretofore filed dated May 7, 1936:

40. The learned court erred in that the judgment which it directed to be entered against the defendant April 20, 1936 violates the opinion, judgment and mandate of the Supreme Court of the United States entered in the instant case: Schuylkill Trust Company, Appellant, v. The Commonwealth of Pennsylvania, Supreme Court of the United States, No. 3, October Term 1935, November 11, 1935, 296 U. S. 113, wherein and whereby it was adjudged by the Supreme Court of the United States that the judgment of the Supreme Court of Pennsylvania be "reversed with costs; and that the said appellant, Schuylkill Trust Company, recover against the said appellee Three Hundred and Forty-four Dollars for its costs herein expended and have execution therefor."

Overruled.

41. The learned court erred in that the judgment which it directed to be entered against the defendant April 20, 1936 violates the opinion, judgment and mandate of the Supreme Court of the United States entered in the instant case: Schuylkill Trust Company, Appellant, v. The Commonwealth of Pennsylvania, Supreme Court of the United States, No. 3, October Term, 1935, November 11, 1935, 296 U. S. 113, wherein and whereby the Act of Assembly of the Commonwealth of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, was held unconstitutional and void.

Overruled.

John Robert Jones, Attorney for the Defendant.

[fol. 221] IN COURT OF COMMON PLEAS

OPINION UPON EXCEPTIONS—January 18, 1937

By the COURT:

We have carefully considered the thirty-nine exceptions filed to our opinion and have passed upon each of them

specifically, following the exception itself. Some of them have been overruled, others modified to be consistent with the calculation stated in this opinion.

As to Exception No. 21, we find that there is some error in the figures. Counsel for the Schuylkill Trust Company complains that we have gone outside of the record in order to make this calculation. It is true that we have gone outside of the stipulation but we have not gone outside of the record. The reports and settlements made by the Commonwealth's officers are a part of the record and we resorted to them in order to ascertain the original figures and resort to them in order to ascertain these corrected figures. As to the second item (b), "Proportionate deductions for United States Securities and exempt shares of stock," we now find that the numerator should be $418,650 instead of $446,712. That is obtained by adding capital, $132,625, surplus $230, undivided profits $79,042, total $441,667, which are the book values less the book values of National Bank Shares, $23,017, making $418,650. Instead of the denominator, $3,735,680, used in our original calculation, which is excepted to, the correct denominator should be $2,158,045. In our original calculation we mistakenly used the total of all resources and deducted therefrom the actual value of the National Bank shares. Our formula, however, is that the denominator should consist of the book value [fol. 222] of permanent investments less the book value of those shares, if any, for which a full deduction has been made. It appears that the permanent investments amount to $2,181,062, and after deducting the book value of the National Bank shares, $23,017, we get the denominator, $2,158,045. Instead of the multiplicand used by us, $286,994, the correct multiplicand is $286,121. This error is accounted for by the fact that the tax value of the Pennsylvania Power & Light Company shares was taken instead of the book value, which is $800 less and the total book value of the exempt items amounts to $286,121.38. There was a mistake of $73.00 in that calculation. So that correctly adding the book value of the shares which are apportioned, the amount is $286,121 instead of the figure $286,994.

The appreciation which should be added to the result of the fraction is $35.00, so that the proper fraction under

subdivision (b) of the deductions in the statement is as follows:

$$\frac{418,650}{2,158,045} \times 286,121 + 35 = 55,541, \text{ instead } \$34,318.$$

The total deductions, therefore, amount to $75,743 instead of $54,520, which leaves total taxable value of the capital stock, $391,171 instead of $412,394. The tax on the same at five mills is $1,955.85 instead of $2,061.97.

Applying the figures mentioned, the following is the correct statement:

[fol. 223] **Statement**

Capital stock and undivided profits (book value)		$440,667
Appreciation		25,247
Capital stock and undivided profits (market value)		$466,914
Less:		
(a) Full deduction for shares of National Bank	$20,202	
(b) Proportionate deduction for U. S. Securities and exempt shares of stock, $\frac{418,650}{2,158,045} \times 286,121 + 35 =$	55,541	75,743
Total value of capital stock		$391,171
Tax on same at 5 mills		$1,955.85
Amount paid on account		570.43
Balance due Commonwealth		$1,385.42
Interest from April 8, 1933 to April 20, 1936		252.15
Total		$1,637.57
Attorney General's commission		81.88
Total		$1,719.45
Less costs allowed to appellant in the mandate of the Supreme Court of the United States		344.00
Total		$1,375.45

[fol. 224] For convenience and clarity we have calculated the interest up to the date of the filing of our former judgment, April 20, 1936.

Now, January 18, 1937, judgment is hereby directed to be entered in favor of the Commonwealth and against the defendant in the sum of $1,375.45.

Wm. M. Hargest, P. J.

IN COURT OF COMMON PLEAS

MODIFIED AND FINAL JUDGMENT—January 22, 1937

By the COURT:

In our opinion filed January 18, 1937, we stated that we had considered thirty-nine exceptions.

We are now advised by counsel for the defendant that there were forty-one exceptions and we find that two additional exceptions were in the files of the Prothonotary's office marked "Filed May 19, 1936," eleven days after the original exceptions were filed. They were not in our hands at the time we wrote the opinion of January 18, 1937. We have overruled the 40th and 41st exceptions, as indicated upon the exceptions themselves.

Counsel for the defendant company apparently is not satisfied with the form of judgment entered January 18, 1937, and we will, therefore, reform the judgment by calculating the interest up to date, instead of to April 20, 1936, as reflected in the judgment of January 18, 1937, and enter it in the form which, we are of opinion, will without doubt become a final judgment.

[fol. 225] Statement

Balance due Commonwealth as directed in our opinion filed January 18, 1937	$1,385.42
Interest from April 8, 1933 to January 22, 1937	314.95
	$1,700.37
Attorney General's commission	85.02
	$1,785.39
Less Costs allowed appellant in the Mandate of the Supreme Court of the United States	344.00
Total	$1,441.39

FINAL JUDGMENT

Now, January 22, 1937, each of the forty-one exceptions is hereby specifically overruled except numbers 21, 22, 23, 29 and 38, which are sustained. The judgment is modified in accordance with and for the reasons given in our Opinion upon exceptions filed January 18, 1937. The judgment entered January 18, 1937, is hereby overruled and final judgment is hereby directed to be entered in favor of the Commonwealth and against the defendant in the sum of $1,441.39.

Wm. M. Hargest, P. J.

[fol. 226] IN SUPREME COURT OF PENNSYLVANIA

STATEMENT OF QUESTIONS INVOLVED

(Brief for Appellant)

1. Is the judgment entered by the court below a compliance with the mandate of the Supreme Court of the United States?

Answer of the court below: "Yes."

2. The Supreme Court of the United States upon appeal, federal questions having been raised, having held the Act of April 25, 1929, P. L. 673 unconstitutional, does the court below have the power to amend the statute by allowing additional deductions?

Answer of the court below: "Yes."

3. Is the said Act discriminatory, unconstitutional and void in violation of the federal statutes and the state and federal constitutional provisions recited in the Assignments of Error?

Answer of the court below:

"Yes", as it was written by the legislature;

"No", as it has been construed and applied after the court below has written into the statute, subsequent to and by reason of the decision of the Supreme Court of the United States, words allowing deductions in addition to those written into it by the legislature.

4. Is the judgment entered by the court below construing and applying the said Act judicial legislation in violation of Section 1 of Article II of the State Constitution?

Answer of the court below: "No."

5. Does the taxation of the shares owned by non-residents of the State violate Section 1 of Article IX of the State Constitution and the due process of law and the equal protection of the laws clauses of the 14th Amendment to the Constitution of the United States?

Answer of the court below: "No."

6. Is the tax imposed by the said Act, as it has been construed and applied by the court below in the settlement of tax made by the said court against the appellant and embodied in its judgment, discriminatory, unconstitutional and void in violation of Section 1, Article IX of the State Constitution, the due process of law and the equal protection of the laws clauses of the 14th Amendment to the Constitution of the United States, the federal statutes and the provisions of the State and United States Constitutions recited in the Assignments of Error?

Answer of the court below: "No."

[fols. 227-228] IN SUPREME COURT OF PENNSYLVANIA

COUNTER-STATEMENT OF QUESTIONS INVOLVED

(Brief for Appellee)

1. The Supreme Court of the United States, upon appeal, Federal questions having been raised, having held the amendments of July 11, 1923, P. L. 1071, May 7, 1927, P. L. 583, and April 25, 1929, P. L. 673, to the Act of June 13, 1907, P. L. 640 unconstitutional, should not the court have assessed the tax in accordance with the provisions of the Act of June 13, 1907, P. L. 640?

Answer of the court below: "No".

2. The Supreme Court of the United States, upon appeal, Federal questions having been raised, having held the amendments of July 11, 1923, P. L. 1071, May 7, 1927, P. L. 582, and April 25, 1929, P. L. 673 to the Act of June 13, 1907, P. L. 640, unconstitutional and discriminatory, does the court below have the power to amend the statute by allowing additional deductions?

Answer of the court below: "Yes".

[fol. 229] IN SUPREME COURT OF PENNSYLVANIA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed May 18, 1937

1. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 183a, 184a):

Exception:

"1. The Commonwealth having presented a petition to the court praying the court to enter judgment against the defendant by the imposition of a tax under the first proviso of the Act of June 13, 1907, P. L. 640, without allowing any deductions, upon the ground that such was the mandate of the Supreme Court of the United States in the instant case, and the court upon such petition having granted a rule upon the defendant to show cause why judgment should not be entered in accordance with such prayer and the defendant having demurred to the rule, reserving the right to answer, upon the ground, inter alia, that the court had no jurisdiction to enter judgment for tax against the defendant under authority of the mandate of the Supreme Court of the United States but on the contrary under the mandate of said court it was required that judgment be entered in favor of the defendant with costs, the learned court erred in not sustaining the demurrer of the defendant."

Ruling of the court:

"Overruled. The object of the petition has been accomplished. The Court entered judgment without the necessity of passing on the demurrer."

2. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 184a):

Exception:

"2. The learned court erred in that, not having sustained [fol. 230] the demurrer filed by the defendant and having denied to the defendant the right to answer the petition of the Commonwealth and the rule issued by the court upon such petition, by the judgment which it directed to be

entered against the defendant April 20, 1936 it discriminated against the defendant and its shareholders in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws."

Ruling of the court:

"Overruled. The purpose of the petition referred to and the rule granted thereon was simply to get a concise statement of what judgment should be entered in the light of the divergent views of counsel. The defendant was accorded as full a hearing as if no petition had been presented or rule granted."

3. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 184a, 185a):

Exception:

"3. The learned court erred in that having prescribed the formula which it held should be applied to the defendant and which formula required a determination of the book values of the captal, surplus and undivided profits, the book value of the shares of stock for which a full deduction was to be allowed, the book value of 'permanent investments' and the book values of assets which the court held were exempt and non-taxable, it nevertheless entered a judgment which did not comply with such formula and without giving the defendant a hearing and an opportunity to establish the book [fol. 231] values of such assets and 'permanent investments' and to present evidence to show what portion, if any, of the assets which the court held to be exempt and non-taxable and therefore deductible were purchased out of the amount of capital stock paid in, surplus and undivided profits, though such hearing and opportunity were given other trust companies held subject to the Act of April 25, 1929, Pamphlet Laws 673, under authority of which the court directed the entry of judgment against the defendant April 20, 1936, thereby discriminating against the defendant and its shareholders in violation of Section 1 of Article IX of the Constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United

States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws."

Ruling of the court:

"Overruled. See answer to Fifth Exception."

4. The learned court below erred in overruling the exception of the defendant, with exception and ruling of the court thereon read as follows (Record 185a):

Exception:

"4. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

'There is no evidence in the instant case that any of the United States securities were purchased out of capital, surplus or undivided profits.'"

Ruling of the court:

"Overruled."

5. The learned court below erred in overruling the ex- [fol. 232] ception of the defendant, which exception and ruling of the court thereon read as follows (Record 186a):

Exception:

"5. The learned court erred in that it made a tax settlement against the defendant by the application of a method of settlement in accordance with which and upon which it directed the entry of judgment against the defendant April 20, 1936 without the evidence and the findings of facts essential to the application of such method of tax settlement and the entry of such judgment, thereby discriminating against the defendant and its shareholders in violation of Section 1 of Article IX of the Constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws."

Ruling of the court:

"Overruled. This case was originally heard by this Court de novo with full opportunity to present any facts affecting

the amount of tax. When the case was returned under the mandate of the Supreme Court of the United States it was to enter judgment on the record, not to open up the case to make a new record. The formula to be applied was settled in the case of Commonwealth vs. Provident Trust Co., 40 Dau. 146; 41 Dau. 1; 319 Pa. 385."

6. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 186a):

Exception:

"6. The learned court erred in its conclusion in that por- [fol. 233] tion of its opinion which reads as follows:

'The case, however, was argued on the merits, and inasmuch as we have the contentions of the parties now submitted to us it is not necessary to determine the matter upon the petition and rule.' "

Ruling of the court:

"Overruled."

7. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 187a):

Exception:

"7. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

"The questions involved were: 1. What deduction should be made because of the ownership by the defendant of the stock of the Philadelphia National Bank and of United States securities?

2. Is the defendant entitled to have deducted from the settlement the taxable value of all its shares which are held by persons or corporations resident and domiciled in other states of the United States?' "

Ruling of the court:

"Overruled."

8. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 187a):

Exception:

"8. The learned court erred in its conclusion in that por-
[fol. 234] tion of its opinion which reads as follows:

'We are bound to place such a construction upon a statute as will sustain its constitutionality, if it is susceptible of such construction. We do not regard the mandate of the Supreme Court of the United States as definitely determining that these amending acts are unconstitutional and worthless as so much waste paper. We are of opinion that the way is still open to the Pennsylvania courts to limit their application so that they will be free from any discrimination against United States securities or the shares of national banks.'"

Ruling of the court:

"Overruled."

9. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 188a):

Exception:

"9. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

'Our conclusion is that if a full deduction is made for the investment in the shares of national banks and a full deduction is made for the investment of the shares of United States securities, when it is shown that those securities have been purchased out of capital, surplus or undivided profits, and a proportionate deduction is made for United States securities when it is not shown that they have been purchased out of capital, surplus and undivided profits, there would be no unconstitutional application of these amending statutes.'"

[fol. 235] Ruling of the court:

"Overruled."

10. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 188a, 189a):

Exception:

"10. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

'* * *, in ascertaining the taxable value of the shares of trust companies, the following formula should be applied:

'1. The full market value of all securities must be deducted, if they be wholly investments of capital, surplus and undivided profits. Otherwise a proportionate deduction is to be made.

'2. Where a proportionate deduction is to be made it should be according to the following:

'(a) The numerator to consist of the capital, surplus and undivided profits determined by the book values, less the book value of those shares, if any, for which a full deduction has been made.

'(b) The denominator to consist of the book value of permanent investments, less the book value of those shares, if any, for which the full deduction has been made.

'(c) The multiplicand to be the book value of the shares which are apportioned.

'(d) The result thus obtained to be increased or decreased by the amount of appreciation or depreciation of the shares which are apportioned.

'We see no reason for departing from this formula in the instant case. It must be amplified by allowing a full deduction for national bank shares.'"

[fol. 236] Ruling of the court:

"Overruled."

11. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 189a, 190a):

Exception:

"11. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

'2. The defendant contends that the taxable value of all its shares which are held by persons or corporations resident or domiciled in other states of the United States should be deducted in arriving at the settlement.

'Inasmuch as we have decided in the case of Commonwealth v. Provident Trust Company, supra, and in this case that it is not entitled to such deduction, the tax being a tax on shares, and both of those cases having been affirmed by the Supreme Court of Pennsylvania, and while the question was raised in the Supreme Court of the United States it was not passed upon, we are still bound to follow the decision of the Supreme Court of Pennsylvania and we, therefore, concluded that defendant is not entitled to such deductions.' ''

Ruling of the court:

''Overruled.''

12. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 190a):

[fol. 237] Exception:

''12. The Conclusions of Law found by the court and numbered 1, 2, 3, 4, 5, 6, 7 and 8, respectively, being interrelated and embodying the formula and method of settlement which the court holds to be the basis of the judgment which it directed to be entered against the defendant April 20, 1936, are erroneous and in violation of Section 1 of Article IX of the Constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States and are accordingly excepted to as a whole and separately.''

Ruling of the court:

''Overruled.''

13. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 190a, 191a):

Exception:

''13. The learned court erred in its 1st Conclusion of Law which reads as follows:

'1. In the enactment of the Acts of June 13, 1907, P. L. 640, July 11, 1923, P. L. 1071, May 7, 1927, P. L. 853, and April 25, 1929, P. L. 673, the legislature intended to impose a tax upon the shares of stock of trust companies by adding

together the value of the capital, surplus and undivided profits and deducting therefrom the full value of shares of stock of national banks and of Federal reserve banks, and so much thereof as is invested in the shares of stock of other corporations liable to or relieved from a tax on capital stock or shares or in securities issued by the United States Government, its agencies, instrumentalities or dependencies.' "

[fol. 238] Ruling of the court:

"Overruled."

14. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 191a):

Exception:

"14. The learned court erred in its 2nd Conclusion of Law which reads as follows:

'2. The acts above referred to must be construed so as to provide that, in computing the taxable value of the shares of stock of a trust company, the deductions expressly provided for by said acts should be made, and that such other deductions should be made as are necessary to avoid discrimination in favor of the classes of securities specified therein and against the shares of stock of national banks or federal reserve banks or against securities issued by the United States Government, its agencies, instrumentalities or dependencies, in order that the intention of the legislature may be carried into effect, and conflict with the statutes and Constitution of the United States may be avoided.' "

Ruling of the court:

"Overruled."

15. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 191a, 192a):

Exception:

"15. The learned court, being without legislative power [fol. 239] and being bound by the decision of the Supreme Court of Pennsylvania in the instant case filed June 30,

1934 (315 Pa. 429), erred in so much of its 3rd Conclusion of Law as reads as follows:

'3. The acts above referred to, * * *, when so construed and applied as to avoid any discrimination against securities of the United States, its agencies, instrumentalities and dependencies and of national banks, are constitutional.' "

Ruling of the court:

"Overruled."

16. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 192a):

Exception:

"16. The learned court, being without legislative power and being bound by the decision of the Supreme Court of Pennsylvania in the instant case filed June 30, 1934 (315 Pa. 429), erred in its 4th Conclusion of Law which reads as follows:

'4. In computing the taxable value of the shares of the appellant, the full reported market value of the shares of stock of the Philadelphia National Bank owned by appellant should be deducted from its capital, surplus and undivided profits, as the same are determined from the market value of its assets.' "

Ruling of the court:

"Overruled."

17. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the [fol. 240] court thereon read as follows (Record 192a, 193a):

Exception:

"17. The learned court erred in its 5th Conclusion of Law which reads as follows:

'5. By reason of the ownership of the appellant of shares of stock of other corporations which are liable to pay a tax

on their capital stock or shares, and of securities issued by the United States Government or its agencies, instrumentalities or dependencies, which securities have not been shown to consist entirely of investments of capital, surplus and undivided profits of the appellant, it is entitled, in computing the taxable value of its shares, to have deducted from its capital, surplus and undivided profits, as the same are determined from the market value of its assets, a proportion of the value of all such securities, as determined by the following formula:

'(a) The numerator to consist of the capital, surplus and undivided profits, determined by the book value of the assets, less the book value of those securities for which a full deduction has been made; (b) the denominator to consist of the book value of the permanent investments, less the book value of those securities, for which a full deduction has been made; (c) such fraction to be multiplied by the book value of the securities which are to be apportioned; (d) the result thus obtained to be increased or decreased by the amount of appreciation or depreciation in the value of the securities which are apportioned.' ''

Ruling of the court:

"Overruled."

18. The learned court below erred in overruling the ex-
[fol. 241] ception of the defendant, which exception and ruling of the court thereon read as follows (Record 193a):

Exception:

"18. The learned court erred in its 6th Conclusion of Law which reads as follows:

'6. The situs of the shares of stock of a trust company for the purpose of taxation is the domicile of the company.' ''

Ruling of the court:

"Overruled."

19. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 193a):

Exception:

"19. The learned court erred in its 7th Conclusion of Law which reads as follows:

'7. The appellant is not entitled to have deducted in the settlement of the taxable value of its shares those shares which are held by persons or corporations resident or domiciled outside of the State of Pennsylvania.' "

Ruling of the court:

"Overruled."

20. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 194a):

[fol. 242] Exception:

"20. The learned court erred in its 8th Conclusion of Law which reads as follows:

'8. Judgment must be entered in favor of the Commonwealth and against the defendant.' "

Ruling of the court:

"Overruled."

21. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 194a, 195a):

Exception:

"21. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

'From what we have said in this opinion and in the opinion in the case of Commonwealth of Pennsylvania v. Girard Trust Company, No. 162 Commonwealth Docket 1933, we conclude that for the purpose of taxation the following is a correct

'Statement

'Capital Stock, Surplus and Undivided Profits (book value)		$441,667
Appreciation		25,247
Capital, Surplus and Undivided Profits (market value)		$466,914
Less:		
A. Full deduction for shares of National Banks	$20,202	
B. Proportionate deduction for United States Securities and [fol. 243] exempt shares of stock, $\frac{446,712}{3,735,680} \times 286,994 =$	34,318	54,520
Taxable Value of Capital Stock		$412,394
Tax on same at 5 mills	$2,061.97	
Amount paid on account	570.43	
Balance due the Commonwealth	1,491.54	
Interest from April 8, 1933	228.73	
Total	1,715.27	
Attorney General's Commission of 5%	85.76	
Total	$1,801.03	
Less the costs allowed to the appellant in the mandate of the Supreme Court of the United States	344.00	
	$1,457.03' "	

Ruling of the court:

"Sustained and judgment modified. See opinion."

22. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 195a):

Exception:

"22. The learned court erred in its conclusion in that portion of its opinion which reads as follows:

[fol. 244] 'For the reasons given in this opinion and in the opinion in the case of Commonwealth of Pennsylvania v. Girard Trust Company, No. 162 Commonwealth Docket 1933, filed herewith, we directed judgment to be entered as above indicated April 20, 1936.

'Wm. M. Hargest, P. J.'"

Ruling of the court:

"Sustained and Judgment modified. See opinion."

23. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 195a, 196a):

Exception:

"23. The learned court erred in directing the following judgment to be entered:

'And now, April 20, 1936, for the reasons given in an opinion hereafter to be filed in this case and in the case of Commonwealth of Pennsylvania v. Girard Trust Co. No. 162 Commonwealth Docket, 1933, judgment is hereby directed to be entered in favor of the Commonwealth and against the defendant in the sum of $1801.03, less, however, the allowance of costs to the said Schuylkill Trust Company of $344 fixed by the mandate of the Supreme Court of the United States, unless exceptions be filed within the time limited by law.

'Wm. M. Hargest, P. J.'"

Ruling of the court:

"Sustained and judgment modified. See opinion."

[fol. 245] 24. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 196a):

Exception.

"24. The learned court erred in not directing judgment to be entered in favor of the Schuylkill Trust Company, the defendant, and against the Commonwealth of Pennsylvania, the plaintiff, together with costs."

Ruling of the court:

"Overruled."

25. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 196a):

Exception:

"25. The learned court erred in that it held that a method of settlement described in its opinion as the method of settlement which was applied by it 'In the case of Commonwealth v. Provident Trust Co., 40 Dauph. 146, 41 Dauph. 1, affirmed in 319 Pa. 385,' is a method of settlement which is consistent with the opinion of the Supreme Court of the United States and complies with its mandate in the instant case."

Ruling of the court:

"Overruled."

26. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 197a):

[fol. 246] Exception:

"26. The learned court erred in that the judgment which it directed to be entered against the defendant April 20, 1936 was determined in amount by a method of settlement which differs from the method of settlement which in its opinion it declared to be the proper method of settlement and which it described in its opinion as the method of settlement applied in the case of Commonwealth v. Provident Trust Co., 40 Dauph. 146, 41 Dauph. 1, affirmed in 319 Pa. 385 (1935)."

Ruling of the court:

"Overruled."

27. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 197a):

Exception:

"27. The learned court erred in that the judgment which it directed to be entered against the defendant April 20, 1936 was determined in amount by a method of settlement which differs from the method of settlement which was applied to other trust companies for the same and other tax years under authority of the said Act of April 25, 1929, Pamphlet Laws 673, and in the cases of the Provident Trust Company, 40 Dauph. 146, 41 Dauph. 1, and the Girard Trust Company, Court of Common Pleas of Dauphin County, No. 162, Commonwealth Docket, 1933, to both of which the court refers, thereby discriminating against the defendant and its shareholders in violation of Section 1 of Article IX of the constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their [fol. 247] property without due process of law and denying to them the equal protection of the laws."

Ruling of the court:

"Overruled."

28. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 198a):

Exception:

"28. The learned court erred in that its construction and application of the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, by the judgment directed to be entered against the defendant April 20, 1936 constitute judicial legislation amending the statute by writing into it a provision granting additional exemptions from taxation in violation of Section 1 of Article II of the Constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws."

Ruling of the court:

"Overruled."

29. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 198a):

Exception:

"29. The learned court erred in that the judgment which it directed to be entered against the defendant April 20, [fol. 248] 1936 violates the opinion, judgment and mandate of the Supreme Court of the United States, (November 11, 1935) (296 U. S. 113)."

Ruling of the court:

"Sustained and judgment modified. See opinion."

30. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 198a):

Exception:

"30. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under the authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void, being in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws."

Ruling of the court:

"Overruled."

31. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 199a):

Exception:

"31. The learned court erred in that the Act of Assembly [fol. 249] of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under the authority of which it

directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void, being in violation of Clause 2 of Section 8 of Article I of the Constitution of the United States which gives the Congress of the United States power to borrow money on the credit of the United States."

Ruling of the court:

"Overruled."

32. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 199a):

Exception:

"32. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under the authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that it imposes a tax upon and discriminates against United States securities owned by the defendant in violation of Clause 2 of Section 8 of Article I of the Constitution of the United States which gives the Congress of the United States power to borrow money on the credit of the United States, Section 3701 Revised Statutes of the United States, 31 U. S. C. Sec. 742, which exempts obligations of the United States from state taxation and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws."

[fol. 250] Ruling of the court:

"Overruled."

33. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 199a, 200a):

Exception:

"33. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under the authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that it imposes a tax

upon and discriminates against Philippine Islands bonds owned by the defendant in violation of the provisions of the Act of Congress of the United States of August 29, 1916, c. 416, 39 Stat. 548, Sec. 11, Act of Congress of the United States of July 21, 1921, c. 51, 42 Stat. 145, and Act of the Philippine Legislature Number 2949 approved February 5, 1921, Act of Congress of February 6, 1905, c. 453, 33 Stat. part 1, 689, Clause 2 of Section 8 of Article I of the Constitution of the United States which gives the Congress of the United States power to borrow money on the credit of the United States and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws."

Ruling of the court:

"Overruled."

34. The learned court below erred in overruling the ex-
[fol. 251] ception of the defendant, which exception and ruling of the court thereon read as follows (Record 200a, 201a):

Exception:

"34. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under the authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that it imposes a tax upon and discriminates against Joint Stock Land Bank bonds owned by the defendant in violation of the provisions of 'The Federal Farm Loan Act' of the United States Congress of July 17, 1916, c. 245, 39 Stat. 360, Sec. 16, Sec. 26, Clause 2 of Section 8 of Article I of the Constitution of the United States which gives the Congress of the United States power to borrow money on the credit of the United States and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws."

Ruling of the court:

"Overruled."

35. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 201a-204a):

Exception:

"35. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it di- [fol. 252] rected the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that it has been held to authorize the deduction of assets consisting of shares of stock of Federal Reserve Banks and National Banks 'flat', i. e. at their full value, from the amount of capital stock paid in, the surplus and undivided profits which is the value of the net assets, irrespective of whether or not such shares of stock were purchased out of the capital stock paid in, the surplus and undivided profits, and to authorize the apportionment of United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and a class of assets owned by the defendant and described in the statute as shares of stock of corporations liable to pay to the Commonwealth a capital stock tax or relieved from the payment of capital stock tax or tax on shares, between the amount of its capital stock paid in, the surplus and undivided profits (the value of the net assets) and the amount of its liabilities, for the purpose of determining what portion of the value of the said United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and shares of stock is to be deducted from the amount of the capital stock paid in, the surplus and undivided profits (the value of the net assets) in order to determine the taxable value to which the rate of tax is to be applied and the consequent amount of tax required to be paid and for that purpose to include in the value of the defendant's total assets the full value of assets consisting of United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the said shares of stock described in the statute, the result of which is to discriminate against, to impose a tax upon and to infringe the immunity from state taxation of the said United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and to impose a tax upon the said shares of stock described in the statute. Such construction and [fol. 253] application of the statute by the court violates

Section 1 of Article IX of the Constitution of Pennsylvania, Section 1 of the Fourteenth Amendment to the Constitution of the United States and Clause 2 of Section 8 of Article I of the Constitution of the United States by discriminating against the defendant and its shareholders by reason of its ownership of the said securities, bonds and shares of stock and by depriving the defendant and its shareholders of their property without due process of law and impairing the power of the Congress of the United States to borrow money on the credit of the United States because under the settlement of the tax and the judgment entered against the defendant the amount of the tax settled against it was increased by reason of its ownership of United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds and by denying to the defendant and its shareholders the equal protection of the laws and discriminating against such non-taxable assets and against it, the defendant, and its shareholders because of its ownership of such assets, the said court having allowed in settlements made in the cases of some trust companies which were subject to the said state statute a deduction from the value of the net assets of the full value of the shares of stock described in the statute, the full value of United States securities and obligations of federal agencies and instrumentalities and national bank shares and shares of stock of Federal Reserve Banks in order to determine the taxable value to which the rate of tax was applied, whereas, under the method of settlement and calculation of the tax applied to the defendant no such 'flat' deduction was allowed of the said exempt and non-taxable assets owned by the defendant consisting of United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and exempt shares of stock described in the statute. The necessary effect and consequence of such construction of the statute and such method of settlement and calcula-
[fol. 254] tion of the tax is that no tax is imposed in the case of trust companies the assets of which consist solely of such exempt and non-taxable shares of stock or securities and tax is imposed in cases of trust companies if any of the assets consist of United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds and settlement is made by allowing 'proportionate' instead of 'flat'

deductions, tax liability being determined not only by the kind of assets owned by each trust company without regard to the value of the shares of stock issued by the trust company and the value of the shareholders' interest in such shares of stock but also by whether or not a 'flat' or a 'proportionate' deduction of the exempt and non-taxable assets is allowed."

Ruling of the court:

"Overruled."

36. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 204a, 205a):

Exception:

"36. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that it has been held to impose a tax upon the shares of stock issued by the defendant and other domestic trust companies as shares and upon the interest of the shareholders, both residents and non-residents of the State of Pennsylvania, in such shares and that such tax was imposed by the method of settlement which [fol. 255] was applied in the settlement of the tax made against the defendant wherein and whereby the amount of the tax required to be paid is determined by the application of the rate of tax to a value of assets determined by deducting from the value of the total assets of the trust company the amount of its liabilities together with a portion of the value of a class of assets owned by the trust company and described in and expressly exempted by the statute as shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of a capital stock tax or tax on shares, and a portion of the value of the non-taxable United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds owned by the defendant, which portion so to be deducted is such portion of the value of such shares of stock, securities and bonds as the amount of capital stock paid in, the surplus and undivided profits (the value of the net assets) less the value of assets deducted 'flat' (i.e. deducted at their

full value) bears to the value of the total assets, less the value of assets deducted 'flat' (i. e. deducted at their full value). The result of such method of settlement of the tax made by the said court is to discriminate against and to impose a tax upon the said shares of stock described in and expressly exempted from tax by the statute and the United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds, which tax is determined by the application of the rate of tax to the portion of their value not deducted, and upon all other assets of the trust company not deducted at their full value from the value of the net assets, among which in the case of the defendant were United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and such exempt shares of stock described in and expressly exempted by the statute which were included in the value of the defendant's total assets at the value of $286,994, whereby there was a violation of Section 1 of Article IX of the Constitution of Pennsylvania [fol. 256] and whereby the defendant and its shareholders were deprived of their property without due process of law and had denied to them the equal protection of the laws and the power of Congress of the United States to borrow money on the credit of the United States was impaired in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States and Clause 2 of Section 8 of Article I of the Constitution of the United States."

Ruling of the court:

"Overruled."

37. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 206a, 207a):

Exception:

"37. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that under its authority the said court made a tax settlement against the defendant wherein and whereby the amount of tax required to be paid is increased by reason and on account of the defendant's ownership of non-taxable United States securities, Philip-

pine Islands bonds and Joint Stock Land Bank bonds and the amount of the tax is lessened in the cases of all other trust companies in proportion as such other trust companies invested in shares of stock described in the said statute as shares of stock issued by corporations liable to pay to the Commonwealth a capital stock tax or relieved from the payment of a capital stock tax or tax on shares, Federal Re-
[fol. 257] serve Bank shares, National Bank shares and other assets held to be deductible 'flat', i. e. at their full value, from the net assets in order to determine the taxable value and consequent tax liability, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws, Clause 2 of Section 8 of Article I of the Constitution of the United States by impairing the power of Congress of the United States to borrow money on the credit of the United States and the decisions of the Supreme Court of the United States in the cases of Missouri v. Gehner, 281 U. S. 313 (1930), MacAllen Co. v. Mass., 279 U. S. 620 (1929) and Bank of California v. Richardson, 248 U. S. 476 (1919)."

Ruling of the court:

"Overruled."

38. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 207a, 208a):

Exception:

"38. The learned court erred in that having held that the Act of April 25, 1929, Pamphlet Laws 673, under authority of which it directed the entry of judgment April 20, 1936, authorized the deduction of assets consisting of shares of stock of Federal Reserve Banks and National Banks 'flat', i. e. at their full value, from the amount of capital stock paid in, the surplus and undivided profits which is the value of the net assets, irrespective of whether or not such shares of stock were purchased out of the amount of capital
[fol. 258] stock paid in, the surplus and undivided profits, and in the tax settlement made against the defendant upon which it based such judgment having made such 'flat' deduction of Philadelphia National Bank shares owned by

the defendant of the value of $20,202. from the amount of the capital stock paid in, the surplus and undivided profits, i. e. the value of the net assets, irrespective of whether or not they were purchased out of the amount of capital stock paid in, the surplus and undivided profits, the United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the shares of stock exempted from tax and described in the statute and owned by the defendant of the value of $286,994. were not in like manner deducted 'flat,' and as a consequence the said judgment discriminated against the defendant and the said Act of April 25, 1929, Pamphlet Laws 673, which was held to authorize the entry of such judgment discriminates against the defendant and all trust companies which own similar assets and are denied 'flat' deductions from net assets in violation of Section 1 of Article IX of the Constitution of Pennsylvania which requires that 'All taxes shall be uniform upon the same class of subject, within the territorial limits of the authority levying the tax and shall be levied and collected under general laws' and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws."

Ruling of the court:

"Sustained and judgment modified. See opinion."

39. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the [fol. 259] court thereon read as follows (Record 208a):

Exception:

"39. The learned court erred in that the Act of Assembly of the State of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it directed the entry of judgment against the defendant April 20, 1936, is unconstitutional and void in that as held by the said court it imposes a tax upon the shares of stock issued by the defendant and other domestic trust companies as shares and upon the interest of the shareholders, both residents and non-residents of the State of Pennsylvania, in such shares, and thereby imposes a tax upon the property of such shareholders of the defendant who were non-residents of the state

and upon their property which was situate outside the state in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the defendant and its shareholders of their property without due process of law and denying to them the equal protection of the laws."

Ruling of the court:

"Overruled."

40. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 218a):

Exception:

"40. The learned court erred in that the judgment which it directed to be entered against the defendant April 20, 1936 violates the opinion, judgment and mandate of the Supreme [fol. 260] Court of the United States entered in the instant case: Schuylkill Trust Company, Appellant, vs. The Commonwealth of Pennsylvania, Supreme Court of the United States, No. 3, October Term, 1935, November 11, 1935, 296 U. S. 113, wherein and whereby it was adjudged by the Supreme Court of the United States that the judgment of the Supreme Court of Pennsylvania be 'reversed with costs; and that the said appellant, Schuylkill Trust Company, recover against the said appellee Three Hundred and Forty-four Dollars for its costs herein expended and have execution therefor.'"

Ruling of the court:

"Overruled."

41. The learned court below erred in overruling the exception of the defendant, which exception and ruling of the court thereon read as follows (Record 218a):

Exception:

"41. The learned court erred in that the judgment which it directed to be entered against the defendant April 20, 1936, violates the opinion, judgment and mandate of the Supreme Court of the United States entered in the instant case: Schuylkill Trust Company, Appellant, vs. The Commonwealth of Pennsylvania, Supreme Court of the United States,

No. 3, October Term, 1935, November 11, 1935, 296 U. S. 113, wherein and whereby the Act of Assembly of the Commonwealth of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, was held unconstitutional and void."

Ruling of the court:

"Overruled."

[fol. 261] 42. The learned court below erred in its finding in that portion of its "Opinion Upon Exceptions" filed January 18, 1937 which reads as follows (Record 219a):

"The reports and settlements made by the Commonwealth's officers are a part of the record * * *."

43. The learned court below erred in its finding in that portion of its "Opinion Upon Exceptions" filed January 18, 1937 which reads as follows (Record 219a):

"As to the second item (b), 'Proportionate deductions for United States Securities and exempt shares of stock', we now find that the numerator should be $418,650 instead of $446,712. That is obtained by adding capital, $132,625, surplus $230, undivided profits $79,042, total $441,667, which are the book values less the book values of National Bank shares, $23,017, making $418,650."

44. The learned court below erred in its finding in that portion of its "Opinion Upon Exceptions" filed January 18, 1937 which reads as follows (Record 219a):

"Instead of the denominator, $3,735,680, used in our original calculation, which is excepted to, the correct denominator should be $2,158,045."

45. The learned court below in its conclusion in that portion of its "Opinion Upon Exceptions" filed January 18, 1937 which reads as follows (Record 219a, 220a):

"* * * the denominators should consist of the book value of permanent investments less the book value of those shares, if any, for which a full deduction has been made."

[fol. 262] 46. The learned court below erred in its finding in that portion of its "Opinion Upon Exceptions" filed January 18, 1937 which reads as follows (Record 220a):

"It appears that the permanent investments amount to $2,181,062, and after deducting the book value of the

National Bank shares, $23,017, we get the denominator, $2,158,045."

47. The learned court below erred in its finding in that portion of its "Opinion Upon Exceptions" filed January 18, 1937 which reads as follows (Record 220a):

"Instead of the multiplicand used by us, $286,994, the correct multiplicand is $286,121."

48. The learned court below erred in its finding in that portion of its "Opinion Upon Exceptions" filed January 18, 1937 which reads as follows (Record 220a):

"• • • the proper fraction under sub-division (b) of the deductions in the statement is as follows:

$$\frac{418,650}{2,158,045} \times 286,121 + 35 = 55,541, \text{ instead of } \$34,318."$$

49. The learned court below erred in its finding in that portion of its "Opinion Upon Exceptions" filed January 18, 1937 which reads as follows (Record 220a):

"The total deductions, therefore, amount to $75,743 instead of $54,520, which leaves total taxable value of the capital stock, $391,171 instead of $412,394. The tax on the same at five mills is $1,955.85 instead of $2,061.97."

50. The learned court below erred in its finding and conclusion in that portion of its "Opinion Upon Exceptions" [fol. 263] filed January 18, 1937 which reads as follows (Record 220a, 221a):

"Applying the figures mentioned, the following is the correct statement:

"Statement

"Capital stock, surplus and undivided profits (book value)		$441,667
Appreciation		25,247
Capital stock and undivided profits (market value)		$466,914
Less		
(a) Full deduction for shares of National Bank	$20,202	
(b) Proportionate deduction for U. S. Securities and exempt shares of stock, $\frac{418,650}{2,158,045} \times 286,121 + 35 =$	$55,541	75,743
Total value of capital stock		$391,171
Tax on same at 5 mills		$1,955.85
Amount paid on account		570.43
Balance due Commonwealth,		$1,385.42
Interest from April 8, 1933 to April 20, 1936		252.15
Total		$1,637.57
Attorney General's commission		81.88
Total		$1,719.45
Less costs allowed to appellant in the mandate of the Supreme Court of the United States		344.00
Total		$1,375.45"

[fol. 264] 51. The learned court below erred in directing the entry of the judgment which reads as follows (Record 222a):

"Now, January 18, 1937, judgment is hereby directed to be entered in favor of the Commonwealth and against the defendant in the sum of $1,375.45.

Wm. M. Hargest, P. J."

52. The learned court below erred in its finding and conclusion in that portion of its opinion entitled "Modified

Judgment'' filed January 22, 1937 under the heading ''Statement'' which reads as follows (Record 223a):

''Statement

''Balance due Commonwealth as directed in our opinion filed January 18, 1937	$1,385.42
Interest from April 8, 1933 to January 22, 1937	314.95
	$1,700.37
Attorney General's commission	85.02
	$1,785.39
Less Costs allowed appellant in the Mandate of the Supreme Court of the United States	344.00
Total	$1,441.39''

53. The learned court below erred in entering its final judgment which reads as follows (Record 223a):

''Final Judgment''

''Now, January 22, 1937, each of the forty-one exceptions is hereby specifically overruled except numbers 21, 22, 23, 29 and 38, which are sustained. The judgment is modified in accordance with and for the reasons given in our Opinion upon exceptions filed January 18, 1937. The judgment entered January 18, 1937, is hereby overruled and final judgment is hereby directed to be entered in favor of the Commonwealth and against the defendant in the sum of $1,441.39.

Wm. M. Hargest, P. J.''

[fol. 265] [File endorsement omitted]

[fol. 266] IN SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT, MAY TERM, 1937

Nos. 35, 36

COMMONWEALTH OF PENNSYLVANIA

v.

SCHUYLKILL TRUST COMPANY, Appellant

COMMONWEALTH OF PENNSYLVANIA, Appellant,

v.

SCHUYLKILL TRUST COMPANY

Appeals from Final Judgment of Court of Common Pleas of Dauphin County, in No. 61, Commonwealth Docket, 1933

OPINION OF THE COURT—Filed June 25, 1937

STERN, J.:

From a judgment of the Court of Common Pleas of Dauphin County fixing the settlement of the tax on shares of capital stock of defendant, a trust company, for the year 1930, both Commonwealth and defendant have appealed. The controversy was previously in this court (Commonwealth v. Schuylkill Trust Company, 315 Pa. 429) but on two of the questions involved an appeal was taken by defendant to the Supreme Court of the United States.[1] They were: (1) Whether a deduction from the appraisement on which the tax was *assessed should be made* for the value of shares of national bank stock held by defendant; (2) Whether a discrimination against United States government securities arose from the fact that their value was not deducted from the appraisement, although deductions were made for investments in "shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of capital stock tax or tax on shares," as provided by the Acts of July 11, 1923,

[1] The appeal was also as to the right of the Commonwealth to tax shares of stock of defendant owned by residents of states other than Pennsylvania, but the Supreme Court did not pass upon this question. It was decided—contrary to defendant's contention—in 315 Pa. 429.

P. L. 1071, May 7, 1927, P. L. 853, and April 25, 1929, P. L. 673, which amended the original act of June 13, 1907, P. L. 640.[2]

[fol. 267]. As to the first question, the Supreme Court held (Schuylkill Trust Company v. Pennsylvania, 296 U. S. 113) that the national bank stock having been taxed to the bank's shareholders by the Act of July 15, 1897, P. L. 292, as amended by the Act of April 25, 1929, P. L. 677, it could not again be taxed to defendant's stockholders: R. S. § 5219, 12 U. S. C. A. § 548; Bank of California v. Richardson, 248 U. S. 476. On this point there can be no further controversy.

As to the second question, the Supreme Court stated that "The impost as laid by the Act of 1907 was a true tax on shares and not a tax upon the assets of trust companies. Such an exaction is not a tax upon United States securities owned by the corporation whose shares are taxed or upon securities exempt from taxation because issued by instrumentalities of the Federal government."[3] But because of the statutory deductions of the value of stocks already taxed or relieved from taxation by the state, no similar deduction being provided for in the case of United States securities, it "is impossible to avoid the conclusion" that the law works a discrimination against such securities. The court therefore remanded the cause "for further proceedings not inconsistent with this opinion." Mr. Justice Cardozo filed a dissenting opinion, concurred in by Mr. Justice Brandeis and Mr. Justice Stone, in which he said that the Pennsylvania statutes were not passed as acts of "'unfriendly discrimination' . . . against the national securities, nor . . . in aid of classes of investments with which the national securities are in substantial competition. . . . Assuming such a discrimination, I do not under-

[2] There were further amendments to the Act of 1907 by the Acts of May 31, 1933, P. L. 1132, and July 28, 1936, Spec. Sess. P. L. 73, which finally eliminated all deductions from the amount of capital stock paid in, surplus and undistributed profits, in ascertaining the value of the shares for taxation.

[3] See Van Allen v. The Assessors, 3 Wall. 573; Cleveland Trust Co. v. Lander, 184 U. S. 111; Des Moines National Bank v. Fairweather, 263 U. S. 103, 112; Educational Films Corporation v. Ward, 282 U. S. 379, 390.

stand that any mandate is laid by this court upon the Supreme Court of Pennsylvania as to the choice between two methods of avoiding or correcting it. * * * If the state maintains the deductions prescribed by the amendments, it must remove the discrimination now held to be unlawful, [fol. 268] even at the price of enlarging the deductions. Iowa Des Moines Bank v. Bennett, 284 U. S. 239, 247. On the other hand, it may cancel the deductions altogether, annulling the amendatory acts in so far as they prescribe a new method of valuation and going back in that respect to the law previously in force. In that event the tax to be paid by the appellant will be increased instead of lessened. The choice between these curative measures must be made by the state court."

The case being again before the Common Pleas of Dauphin County, that court rendered opinions, through President Judge Hargest (42 Dauphin Co. Rep. 317; 43 Dauphin Co. Rep. 258 and 261, and, in the companion case of Commonwealth v. Girard Trust Company, 42 Dauphin Co. Rep. 299), which are so comprehensive and self-vindicating that what here follows is more by way of restatement than of profitable addition. The court held that the effect of the United States Supreme Court decision was not wholly to invalidate the amendatory acts of 1923, 1927 and 1929, but merely to require, in the appraisal of the shares of stock of trust companies, that securities of the United States government be put upon the same favorable basis, by way of deduction from the tax valuation, as the investments eliminated under the specific provisions of those acts.

There are three possible solutions of the problem left open by the decision of the Supreme Court: one, urged by the Commonwealth on its appeal; a second, urged by defendant on its appeal; the third, adopted by the court below.

1. The contention of the Commonwealth is that the Supreme Court held the amendatory acts of 1923, 1927 and 1929 unconstitutional, leaving the original act of 1907 unaffected,[4] and that the tax settlement of defendant's shares of stock should therefore be made in accordance with that [fol. 269] act, which allowed no deductions whatever. It maintains that the proviso in the Act of 1907 which gave

[4] Eberle v. Michigan, 232 U. S. 700, 705; Truax v. Corrigan, 257 U. S. 312, 342; Davis v. Wallace, 257 U. S. 478, 485.

permission to a trust company paying the tax before the first of March to deduct investments in shares of stock of corporations liable to pay to the Commonwealth a capital stock tax or tax on shares, was merely the allowance of a discount for prompt payment, but that even if it were held to be unconstitutional as involving the same discrimination against United States securities as that brought about by the amendatory acts, its invalidity would not affect the remainder of the Act of 1907. Thus it is the Commonwealth's position that the discrimination should be remedied, not by allowing a deduction of the United States securities, but by eliminating the deductions granted by the amendatory acts.

2. Defendant agrees with the Commonwealth that the amendatory acts were completely nullified by the Supreme Court decision, but argues that the "discount" proviso of the Act of 1907 is also invalid, and that it cannot be amputated without destroying the act itself, severability being impossible because of the interdependence of the proviso and the body of the act.[5] Defendant further argues that the Act of 1907 is invalid even apart from the proviso, because it fails to exclude from the tax appraisement the value of the shares of stock of national banks, and therefore, on the Commonwealth's theory that such an exclusion cannot be "judicially" created, the Act of 1907 is incapable of constitutional application. The result would be that no statute would remain under which defendant's stock could be taxed.

3. The court below approved of neither of these extreme positions, but adopted the intermediate course of holding that, since the Supreme Court had decided that the amendments to the Act of 1907, as interpreted by the state courts, imposed an unconstitutional tax upon securities of the United States government, the remedy was, not to declare [fol. 270] these statutes invalid, but to limit their application by implying a legislative intent to exclude such securities. The court pointed out that this method of interpretative adaptation of a statute to constitutional requirements, far from being unique, has been regularly employed, and illustrations of its use are abundantly to be found in the

---

[5] Booth & Flinn, Ltd. v. Miller, 237 Pa. 297, 309; Commonwealth v. Humphrey, 288 Pa. 280, 290.

decisions construing various other tax statutes.[6] For example, if an act imposes a tax upon various articles or subjects, and it cannot constitutionally be sustained as to one or more of them, the statute is not thereby invalidated as a whole, unless, of course, it clearly appears that the legislature would not have passed the act as thus reduced in scope. This is not "judicial legislation," nor does it involve a "rewriting" of statutory enactments; it adds nothing to the legislative provisions; it merely enforces them to the extent possible in view of constitutional limitations.[7] "A presumption of much importance in this country, * * * is that a legislative intent to violate the constitution is never to be assumed, if the language of the statute can be satisfied, by a contrary construction": Endlich, Interpretation of Statutes, § 178, "It is a safe and wholesome rule * * * to regard as excepted by necessary implication from even the most express and absolute general provisions, all cases to which a statute cannot constitutionally apply": Idem, § 179.

---

[6] For example, in the case of the capital stock tax, Commonwealth v. Standard Oil Co., 101 Pa. 119, 146; Commonwealth v. Lackawanna Iron & Coal Co., 129 Pa. 346, 356; Commonwealth v. Westinghouse Electric & Manufacturing Co., 151 Pa. 265; Commonwealth v. Westinghouse Air Brake Co., 251 Pa. 12. In the case of the corporate loans tax, Pittsburgh, Fort Wayne & Chicago Railway Co. v. Commonwealth, 66 Pa. 73; Commonwealth v. Barrett Manufacturing Co., 246 Pa. 301. In the case of the tonnage tax, In re State Freight Tax, 15 Wall. 232, 282. In the case of the inheritance tax, Bittinger's Estate, 129 Pa. 338, 345; Frick v. Pennsylvania, 268 U. S. 473. In the case of the mercantile license tax, Crew Levick Co. v. Pennsylvania, 245 U. S. 292.

[7] In Fidelity & Guaranty Fire Corporation v. Leser, 190 Atl. 830, the Court of Appeals of Maryland held, in construing a statute of that state similar to the one here involved, that the deductions prescribed in the statute could not be allowed in view of the Supreme Court decision in the present case. In the Maryland act, however, there was a clause that "if any exemption or exception from any tax is held invalid, the tax shall apply without such exemption or exception."

[fol. 271] We are of opinion, therefore, that the decision of the court below constitutes the proper solution of the problem involved.

As to the method or formula employed to determine what part of the non-taxable investments are included within the capital stock structure, there is no serious complaint made by defendant, nor could there be in view of the previous decisions of this court. In Commonwealth v. Hazelwood Savings and Trust Co., 271 Pa. 375, it was held that if a trust company purchases the non-taxable securities out of its paid-in capital stock, surplus and undivided profits, the entire value thereof should be deducted, but if out of its other assets, no part of their value is deductible, and that the burden is upon the company to prove that it did purchase the securities out of its capital stock account, and, if it fails to establish that fact, the Commonwealth may, perhaps, refuse to allow any deduction whatever; if, therefore, instead of doing this, the Commonwealth adopts the more equitable course of apportioning the value of the non-taxable securities between the two funds, the trust company has no just cause for complaint. The same method of apportionment was approved by this court when the present case was previously before it: Commonwealth v. Schuylkill Trust Co., 315 Pa. 429, and again in Commonwealth v. Provident Trust Co. of Philadelphia, 319 Pa. 385.[8]

The judgment is affirmed.

[fol. 272] [File endorsement omitted.]

---

[8] The formula is as follows: The numerator consists of the capital paid in, surplus, and undivided profits, determined by the book values, less the book value of those investments, if any, for which a full deduction has been made. The denominator consists of the book values of the permanent investments, less the book value of those investments, if any, for which a full deduction has been made. The multiplicand is the book value of the shares and securities which are to be apportioned. The result thus obtained is increased or diminished by the amount of appreciation or depreciation in the shares and securities apportioned.

[fol. 273] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

Petition for Appeal from Judgment of the Supreme Court of Pennsylvania, Middle District, as of May Term, 1937, No. 35, Assignments of Error, and Prayer for Reversal— Filed August 31, 1937

PETITION FOR APPEAL

To the Honorable the Justices of the Supreme Court of the United States:

Considering itself aggrieved by the final decision of the Supreme Court of the State of Pennsylvania in the above entitled cause, the appellant therein, Schuylkill Trust Company, a corporation incorporated under the laws of the State of Pennsylvania, hereby prays that an appeal issue to the said court herein and for an order fixing the amount of the bond thereon and respectfully shows:

1. That the petitioner was the appellant and the Commonwealth of Pennsylvania was the appellee in the appeal to the Supreme Court of Pennsylvania, which is the highest and the court of last resort of said State, from the judgment of the Court of Common Pleas of Dauphin County making a settlement of tax against the petitioner for the tax and calendar year ending December 31, 1930, fixing the liability of the petitioner for a tax in the amount of $1,441.39 under the alleged authority of an Act of Assembly [fol. 274] of the Commonwealth of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, Laws of Pennsylvania, 1929.

2. That the petitioner, Schuylkill Trust Company, a domestic corporation, to which letters patent were issued upon October 17, 1887, filed its report for the twelve months ending December 31, 1930 in the Department of Revenue as required by the Act of Assembly of Pennsylvania of April 25, 1929, Pamphlet Laws 673, and that thereupon the Department of Revenue made a settlement of tax against the said petitioner under the alleged authority of the said Act of Assembly in the amount of $2306.08 upon January 25, 1932 which was approved by the Department of the Auditor General January 26, 1932.

3. That subsequent thereto and in due course a petition for resettlement was filed which was refused by the said Departments of Revenue and of the Auditor General. Thereupon a petition for review was filed with the Board of Finance and Revenue which Board made a resettlement of the said tax under the alleged authority of the said act upon January 26, 1933 whereby tax was imposed in the amount of $2,290.14, from which resettlement the petitioner took an appeal to the Court of Common Pleas of Dauphin County.

4. That hearing was had in the said Court of Common Pleas of Dauphin County upon the said appeal upon an agreed statement of facts and after argument, said court upon October 19, 1933 affirmed the settlement of tax made by the Board of Finance and Revenue and directed the entry of judgment nisi in the amount of $1719.71 together with costs and Attorney General's Commission thereon in a total amount of $1863.17, which judgment was made absolute November 24, 1933.

[fol. 275] 5. That thereupon and in due course the petitioner took an appeal to the Supreme Court of Pennsylvania which is the highest and the court of last resort of said state, from the judgment of the Court of Common Pleas of Dauphin County. That upon the filing of printed briefs oral argument was had in the Supreme Court of Pennsylvania which court upon June 30, 1934 filed its opinion and directed the entry of judgment affirming the judgment of the Court of Common Pleas of Dauphin County, the opinion of the Supreme Court being written by Mr. Chief Justice Frazer.

6. That in due course and in accordance with the law of the State of Pennsylvania and the rules of the Supreme Court of Pennsylvania, your petitioner filed its Petition for Reargument July 21, 1934, which was denied by the said court upon September 25, 1934. Your petitioner thereupon, to wit, November 26, 1934 presented to the Supreme Court of Pennsylvania its Petition for the allowance of an Appeal to the Supreme Court of the United States which was refused by the Supreme Court of Pennsylvania November 28, 1934.

7. That subsequent thereto and in due course your petitioner presented its petition for the allowance of an ap-

peal to the Supreme Court of the United States which was allowed December 14, 1934 by Roberts, Associate Justice, Supreme Court of the United States.

8. That in due course the appeal was heard before the Supreme Court of the United States and upon November 11, 1935 the opinion of the said court was delivered and filed wherein and whereby the judgment of this court was reversed and the cause remanded for further proceedings not inconsistent with the opinion of the Supreme Court of the United States (296 U. S. 113). The judgment of this court was reversed because it was based upon the Act [fol. 276] of April 25, 1929, P. L. 673, which was discriminatory in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States and United States Revised Statutes, Section 5219, and United States statutes.

9. That thereafter, upon February 11, 1936, the Commonwealth of Pennsylvania presented a petition to the Court of Common Pleas of Dauphin County praying the court to revise its original judgment entered November 24, 1933, which had been affirmed by this court June 30, 1934 and reversed by the Supreme Court of the United States November 11, 1935, by entering judgment in favor of the Commonwealth and against this petitioner in the amount of $2334.57 for tax imposed upon the full actual net asset value of the shares of stock of the petitioner under authority of the first proviso of the Act of June 13, 1907, Pamphlet Laws 640 and that such court issue a rule upon this petitioner to show cause why such judgment should not be entered. February 11, 1936 the court issued a rule upon this petitioner to show cause why the judgment prayed for should not be entered.

10. That to such rule so made by the Dauphin County Court the petitioner filed a demurrer praying the judgment of the court whether it should be required to make any answer to the petition and that it be hence dismissed with its reasonable costs in this behalf sustained. The causes of demurrer are fully set forth in the demurrer. The grounds thereof were, inter alia, that the petitioner was not entitled to the relief prayed for, that there was no authority in the Court of Common Pleas of Dauphin County to make a tax settlement or to make a tax settlement under

the Act of June 13, 1907, Pamphlet Laws 640, there being no such law in force in the State of Pennsylvania either at the time of the petition or during the tax and calendar year for which the tax settlement was originally made and [fol. 277] for which the petition prayed that such settlement be made, and that the same constitutional defects which the Commonwealth admitted made void the Acts of April 25, 1929, Pamphlet Laws 673, May 7, 1927, Pamphlet Laws 853, and July 11, 1923, Pamphlet Laws 1071, made invalid and void the Act of June 13, 1907, Pamphlet Laws 640. (Record, 136a.) Oral argument was had upon the petition and demurrer. The Commonwealth contended that the Act of April 25, 1929, Pamphlet Laws 673 was unconstitutional and void and had been so held by the Supreme Court of the United States and that the prior acts of May 7, 1927, supra, and July 11, 1923, supra, were likewise unconstitutional and void and that therefore a revision of the judgment should be made by the entry of judgment against the Schuylkill Trust Company under the first proviso of the Act of June 13, 1907, Pamphlet Laws 640 by denying all deductions. The petitioner contended that judgment should be entered in its favor together with costs. The Dauphin County Court overruled the demurrer filed by the petitioner, without opportunity to file an answer to the petition, by such court's entering a judgment nisi upon April 20, 1936 imposing a tax together with interest and Attorney General's Commission in the amount of $1801.03 less costs expended in the Federal Court and allowed by said court in the amount of $344., the total judgment entered being $1,457.03. (Record, 152a.) The judgment was based upon the same Act of April 25, 1929, Pamphlet Laws 673 after the court had amended it by allowing deductions in addition to those written in the statute by the legislature.

11. That thereafter in due course the petitioner filed exceptions to the conclusions of law and judgment of the court, there being no dispute as to the facts which were set forth in the stipulations of facts filed at the time of the trial of the cause and before the entry of the original judgment dated November 24, 1933. (Record, 105a.)

12. That upon January 18, 1937 the Dauphin County Court filed an opinion entitled "Opinion Upon Exceptions" wherein it states that it considered certain exceptions filed, that it had sustained some and overruled and modified

others and thereupon proceeded to enter a new and differently formulated and calculated judgment in the amount of $1719.45, from which was deducted the hereinbefore re-
[fol. 278] ferred to amount of costs in the sum of $344., the judgment entered being $1,375.45. The new formula and calculation were compounded of values, some stated to be "book value" and some "market value", a compound of figures and facts not in evidence and not included in the Stipulation of Facts. The court in its opinion admits that its new and differing judgment is founded upon facts other than those upon which the tax settlement and the judgments of the state and federal courts were founded.

13. That subsequent thereto, finding that it had not ruled upon all of the exceptions, the court, upon January 22, 1937 filed another opinion entitled "Modified Judgment" wherein it is stated that the additional exceptions were overruled and proceeded to set forth the grounds of its final judgment which it entered upon such date, the judgment in this opinion being the sum of $1,441.39, which was the amount of the tax, interest and Attorney General's commission, $1,785.39, less the hereinbefore referred to federal court costs of $344. The formula and calculation upon which this new judgment was based are a compound of facts not in evidence as was the basis of the earlier judgment directed to be entered January 18, 1937. (Record, 221a, 222a).

14. That thereupon and in due course the petitioner took an appeal to the Supreme Court of Pennsylvania which is the highest and the court of last resort of said state, from the judgment of the Court of Common Pleas of Dauphin County. That upon the filing of printed briefs oral argument was had in the Supreme Court of Pennsylvania which court upon June 25, 1937 filed its opinion and directed the entry of judgment affirming the judgment of the Court of Common Pleas of Dauphin County, the opinion of the Supreme Court being written by Mr. Justice Stern.

15. That in due course and in accordance with the law of the State of Pennsylvania and the rules of the Supreme
[fol. 279] Court of Pennsylvania, your petitioner filed its Petition For Reargument July 2, 1937 and upon July 12, 1937 your petitioner was notified that reargument had been refused July 7, 1937.

16. That the statute, the validity of which is drawn in question on the ground that it is repugnant to section 3701 Revised Statutes of the United States, 31 U. S. C., Section 742, Act of Congress of August 29, 1916, c. 416, 39 Stat. 548, Sec. 11, Act of Congress of July 21, 1921, c. 51, 42 Stat. 145, Act of Congress of February 6, 1905, c. 453, 33 Stat., part 1, 689, Act of Congress of July 17, 1916, c. 245, 39 Stat. 360 et seq., Sec. 16, Sec. 26, Section 5219 Revised Statutes of the United States, Clause 2, Section 8 of Article I of the Constitution of the United States, Section 1 of the Fourteenth Amendment to the Constitution of the United States and the decision and mandate of the Supreme Court of the United States entered in this same case, to wit, Schuylkill Trust Company, Appellant, vs. The Commonwealth of Pennsylvania, No. 3, October Term, 1935, 296 U. S. 113, is the Act of Assembly of Pennsylvania of April 25, 1929, Pamphlet Laws 673.

17. The petitioner raised these statutory and constitutional questions before the Department of Revenue, the Department of the Auditor General and the Board of Finance and Revenue of the State of Pennsylvania and in its appeal from the settlement of tax to the Court of Common Pleas of Dauphin County and in its appeal to the Supreme Court of Pennsylvania. It also raised these statutory and constitutional questions in the Supreme Court of the United States (296 U. S. 113). These questions were raised also before the Dauphin County Court to whom the mandate of the Supreme Court of the United States had been referred by the Supreme Court of the State of Pennsylvania and which [fol. 280] Court of Common Pleas of Dauphin County made a settlement of tax against your petitioner embodied in a final judgment from which an appeal was taken to the Supreme Court of the State of Pennsylvania. These questions were raised also before the Supreme Court of Pennsylvania in the said recited appeal, the judgment of which court sustaining the judgment of the Dauphin County Court was filed June 25, 1937.

18. The settlement of tax made by the Court of Common Pleas of Dauphin County under the alleged authority of the said state statute of April 25, 1929, Pamphlet Laws 673, and the mandate of the Supreme Court of the United States issued in the case of Schuylkill Trust Company, Appellant,

vs. The Commonwealth of Pennsylvania, No. 3, October Term, 1935, 296 U. S. 113, which settlement of tax was embodied by the said Court in a judgment entered against your petitioner January 22, 1937, which judgment was affirmed by the Supreme Court of Pennsylvania June 25, 1937, was made in accordance with the following method and calculation:

"Statement

"Capital stock and undivided profits (book value)		$440,667
Appreciation		25,247
Capital stock and undivided profits (market value)		$466,914
Less:		
(a) Full deduction for shares of National Bank	$20,202	
(b) Proportionate deduction for U. S. Securities and exempt shares of stock, $\frac{418,650}{2,158,045} \times 286,121 + 35 =$	55,541	75,743
Total value of capital stock		$391,171"

(Manifestly the term, "Total", should be Taxable.)

[fol. 281] The tax was calculated upon the said amount of $391,171 at the rate of five mills with a resultant tax in the amount of $1955.85 upon which credit was given for a payment on account of $570.43, leaving a balance due the Commonwealth in the amount of $1385.42. (Record, 221a.)

Upon such amount of $1385.42 interest was calculated from April 8, 1933 to January 22, 1937 in the amount of $314.95 making a total of $1700.37. Attorney General's commission was calculated upon the said sum of $1700.37 in the amount of $85.02, making a total of $1785.39. From this sum so claimed to be due in the amount of $1785.39 there was deducted:

"Less Costs allowed appellant in the Mandate of the Supreme Court of the United States, $344.00",

leaving a balance of $1441.39, which was the amount of the final judgment directed to be entered by the Dauphin County Court January 22, 1937. (Record, 223a.)

In order that the meaning, intent and effect of this method of calculation applied and embodied in the final judgment of January 22, 1937 and its relationship to the prior judgments entered by the same court in this same case embodying differing methods of settlement and calculations may be made clear, they will be set forth in the order of their sequence:

The method of settlement applied by the taxing officials and affirmed by the original judgment of the Dauphin County Court entered November 24, 1933 and affirmed by the Supreme Court of Pennsylvania June 30, 1934 is set forth in the stipulation of Facts (Record 19a). This method of settlement and the judgment consequent upon its application was considered by the Supreme Court of the United States and held void, for the reason that such Court held the statute under authority of which it was applied discriminatory and void. By this method of settlement, [fol. 282] formula and calculation the taxing officials of the Commonwealth of Pennsylvania determined the actual value of each and all of the assets of the petitioner. They determined the actual value of the amount of capital stock paid in, the surplus and undivided profits of the petitioner, which was the actual value of the net assets of the petitioner and was the difference between the actual value of the total assets and the amount of the liabilities. The actual value of the total assets was fixed at $3,755,882. The actual value of the amount of the capital stock paid in, the surplus and the undivided profits was fixed at $466,914. Included among the total assets were shares of stock issued by corporations which, under the express language of the statute, were exempted from the tax imposed. These shares of stock are described and classified in the statute as shares of stock issued by corporations liable to pay to the Commonwealth a capital stock tax or relieved from the payment of capital stock tax or tax on shares. All of the shares of stock included within such class of shares exempted by the state statute were valued at $155,989, included within which class were Philadelphia National Bank shares of the value of $20,202. These shares are listed in Exhibit "2" which was made a part of Specification of Objection 7 in the appeal taken to the trial court and are listed also in the Stipulation of Facts filed with such court. (Record, 10a, 14a, 15a, 22a).

The taxing officials then determined the value at which these exempt shares of stock of the actual value of $155,989 were taxed or relieved from tax or the capital stock of the corporations which issued them were taxed or relieved from tax under other taxing statutes of the state and fixed such value at $71,373, included within which were the said Philadelphia National Bank shares. (Record, 13a, 14a, 23a, 30a.) [fol. 283] They held that these shares of stock of the actual value of $155,989 were to be deducted from the amount of the capital stock paid in, the surplus and undivided profits at such portion of the said $71,373 as the amount of the capital stock paid in, the surplus and undivided profits bore to the value of the total assets and by such method fixed the amount of such deduction to be $8,886. The view of the taxing officials and the state courts was that the purpose of the exemption of such shares of stock under the language of the statute was to avoid double taxation (Record, 80a, 84a) and therefore since such shares of stock of the actual value of $155,989 had either been taxed or relieved from tax under other taxing statutes of the state or the corporations which issued them had been taxed or relieved from tax upon their capital stock under other taxing statutes of the state, the petitioner was not entitled to a deduction of the full value of these shares in the amount of $155,989. Thus did the state courts in their affirmation of the tax settlement and their construction and application of the state statute deny the claim of the petitioner for the deduction of the whole actual value of the Philadelphia National Bank shares in the amount of $20,202 and the whole actual value of other tax-free shares in the total amount of $155,989.

The calculation in application of the theory of the taxing officials of the Commonwealth of Pennsylvania construing and applying the statute is set forth in the Stipulation of Facts (Record, 18a) and is as follows:

$$441{,}667 + 25{,}247 - \left(\frac{467{,}714}{3{,}755{,}882} \times 71{,}373\right) = 458{,}028.$$

This calculation consists of the following elements: The sum, 441,667 + 25,247 or 466,914, was the actual value of the amount of the capital stock paid in, the surplus and undivided profits. From this sum of 466,914 was deducted the result of the calculation within the brackets, 8,886,

[fol. 284] with a resultant taxable value of 458,028. The numerator of the fraction, 467,714, is the amount of capital stock paid in, the surplus and undivided profits. (There was a mistake in addition. The numerator 467,714, should have been 466,914. See Stipulation of Facts, Record, 21a; Statement of Counsel for the Commonwealth, Record, 29a, 30a.) The denominator of the fraction, $3,755,882, is the value of the total assets. The multiplicand, $71,373, is the taxed and exempt value of the tax-free shares of the actual value of $155,989, determined by the taxing officials as hereinbefore set forth. The portion of the said 71,373 subtracted as the result of the method of settlement and calculation was 8,886 and resulted in the sum of 458,028 which was held to be the taxable value. The rate of tax, five mills, was thereupon applied to the said sum of $458,028 with a resultant tax settled against the petitioner in the amount of $2,290.14.

There were included within the total assets of the petitioner of the value of $3,755,882 national bank shares of the value of $20,202 which were included also within the class of exempt assets tax free under the statute of the whole actual value of $155,989. (Record 10a, 15a, 22a.)

The only deductions allowed under the tax settlement made as the statute was construed and applied by the taxing officials and state courts were a deduction of the amount of the liabilities from the amount of the total assets which resulted in a fixing of the amount of the capital stock paid in, the surplus and undivided profits at $466,914 and a deduction from this latter sum of the said sum of $8,886, whereby a taxable value was determined in the amount of $458,028. The deduction of the full value of the said described shares of stock ($155,989) was not allowed. The deduction allowed by reason of their ownership was $8,886, [fol. 285] which is 5.6 per centum of their whole value. There was no deduction of the full value of national bank shares of the value of $20,202, which was included and listed in the said class of shares (Record, 10a, 14a, 15a, 22a). The only deduction allowed was such portion of the said $20,202 as the amount of capital stock paid in, the surplus and undivided profits bore to the total assets, to wit, a deduction of $2,515, $\left(\frac{467,714}{3,755,882} \times 20,202 = 2515\right)$, which is 12.4 per centum of their whole actual value.

Among the total assets of the petitioner of the value of $3,755,882 were United States securities of the value of $134,907, Philippine Islands bonds of the value of $10,900 and Joint Stock Land Bank bonds of the value of $5,400. No deduction whatsoever was allowed by reason of the petitioner's ownership of these assets.

The state courts in affirming the settlement made by the taxing officials held that the shares of stock to be deducted under the express language of the statute were to be deducted to the extent of such portion of their value which was taxed or exempted from tax under other state taxing statutes (in the instant case, $71,373) as the amount of the capital stock paid in, the surplus and undivided profits bore to the total assets (in the instant case in the amount of $8,886) for the reason, said the trial court, that under the statute "The sole purpose of this exemption clause was to avoid double taxation" (Record 80a, 84a). The state courts construed and applied the statute as directing the deduction of $8,886, 5.6 per centum of the whole actual value ($155,989) of certain assets in order not to tax such portion twice, thereby construing and applying the statute as imposing a tax upon all assets not deducted, it being self-[fol. 286] evident that if $8,886 of the value of assets were to be deducted in order to avoid double taxation, such assets as were not deducted were, in the opinion of the state courts, to be taxed once and that such was the intent and purpose of the statute. Hence it is that the state courts construed and applied the statute as imposing a tax upon the assets of the trust company less certain prescribed deductions and determined the amount of the tax liability by reason and on account of the kind of assets owned by the trust company and not upon the shareholders' interest in the shares of stock issued by the trust company.

In so holding the state courts ignored the fact that there was included within the said class of exempt shares of stock the national bank shares of the value of $20,202 and that the state was without authority to make such shares the basis for any other and further taxation, the petitioner being subject to tax upon such shares at their actual net asset value as the owner thereof under the Pennsylvania Act of April 25, 1929, Pamphlet Laws 677. With reference to the United States securities, the Philippine Islands bonds and the Joint Stock Land Bank bonds, the state

courts admitted that they were non-taxable assets, that the state was without authority to impose a tax upon them but held that they were not taxed, for the reason that, said they, the tax imposed by the said Act of April 25, 1929, Pamphlet Laws 673, was a tax upon shares qua shares, a tax upon the shareholders' interest in the shares issued by the petitioner, and not a tax upon any of the assets owned by the petitioner.

The petitioner contended that the tax was not a tax upon shares as shares, that the statute expressly exempted certain assets owned by the trust company at their whole actual value and imposed the tax solely with reference to remaining assets and that therefore under the tax settle-
[fol. 287] ment there was not only a taxation of such non-taxable securities but also a discrimination against them, by reason of the exemption allowed to certain favored assets described in the statute. The petitioner contended that the proper method of taxation in order to construe the state statute in conformity with the Acts of Congress and the Constitution of Pennsylvania and of the United States and thus carry out the intent of the state legislature was to determine the taxable value to which the rate of tax was to be applied by deducting from the total assets an amount of assets sufficient to cover liabilities, the full value of shares of stock of corporations exempted under the statute, including therein the full value of the national bank shares, and the full value of the United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds, and that when such method is applied the amount of the tax is $570.43, which the petitioner paid (See Defendant's Request for Conclusion of Law 18, Record, 43a, 24a). The petitioner contended also that, in addition to the fact that the statute as written and construed and applied to it imposed a tax upon assets, such statute as construed and applied to it discriminated against the United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds because they were not deducted and eliminated from consideration at their full actual value, although there was a deduction made of a portion of the value of the tax-free shares of stock exempted under the express language of the statute and that consequently the immunity of such United States securities and such bonds and federal instrumentalities was infringed and that the national bank shares being

subject to tax under the Pennsylvania statute of April 25, 1929, Pamphlet Laws 677, could not be made the basis of any other or further taxation and therefore must of necessity be deducted at their full value and eliminated entirely [fol. 288] from consideration in determining any tax imposed under the Act of April 25, 1929, Pamphlet Laws 673, the statute under consideration in the instant case.

Though the state supreme court affirmed the judgment of the trial court and held, upon authority of its earlier decision in the case of Commonwealth v. Hazelwood Savings & Trust Co., 271 Pa. 375 (1921) construing and applying the Act of June 13, 1907, Pamphlet Laws 640, that the petitioner was not entitled to a deduction of the whole value of the shares of stock ($155,989) made tax-free under the express language of the Act of April 25, 1929, Pamphlet Laws 673, and thus denied, in its construction and application of the said Act of 1929, supra, the claim of the petitioner for the deduction of the full value of the national bank shares ($20,202) owned by it, the supreme court said that the question as to the claim and right of the petitioner for the deduction of the whole value of the national bank shares was not raised in the original Specification of Objections filed with the trial court, was not discussed by the trial court and therefore would not be considered by it. This statement of the court is erroneous as is disclosed by the portions of its opinion which precede the statement as well as the sentence immediately following it. That the trial court discussed and ruled upon the question is likewise disclosed by its opinion, its judgment and in particular those portions of its opinion covered by Exceptions of the petitioner Nos. 18, 22, 23, 24, 25, 31, 32; see also conclusions of law of the lower court Nos. 5 and 7. (Record, 44a-85a, 85a-103a.) The petitioner contended that the question was raised before the taxing officials, the trial court and the state supreme court as is shown by the record. (See Specification of Objection 7, of which Exhibit "2" is made a part, Record, 10a, 15a; Stipulation of Facts, Record, 22a, [fol. 289] 23a; Statement of Counsel for the Commonwealth, Record, 31a; Requests for Conclusions of Law Nos. 8, 10, 11, 16, 17, 18 filed with the trial court, Record, 35a-43a; See Assignments of Error and Statement of Questions Involved filed in the Supreme Court of Pennsylvania

printed in Transcript of Record, Supreme Court of the United States, October Term, 1935, No. 3, pages 72 to 90.)

The petitioner contended that having recognized, discussed, passed upon and denied the claim of the petitioner for the deduction of the whole value of all the shares of stock tax-free under the state statute, both state courts recognized, discussed, passed upon and denied the claim of the petitioner for the deduction of the whole value of the Philadelphia National Bank shares which were included within such class of shares tax-free under the statute. The state courts knew and must be held to have known that they were dealing with a federal matter, national bank shares, the right and authority of the state to tax or to consider which in the determination of a tax was a matter solely and exclusively within the control of the federal government and was prescribed by federal statute, and that they were required, both under the decisions of the state courts and of the United States Supreme Court, to take judicial notice of public acts of Congress as well as of state statutes without their being specifically pleaded and therefore were required to take judicial notice of the provisions of Section 5219 of the Revised Statutes of the United States and of the decision of the Supreme Court of the United States in the case of Bank of California v. Richardson, 248 U. S. 476 (1919). (Flanigan v. Washington Ins. Co., 7 Pa. 306 (1848); Ohio v. Hinchman, 27 Pa. 479 (1856); Phila. & R. Ry Co. v. Parry, 66 Pa. Super. Ct. 49 (1917); Goldberg v. Friedrich, 279 Pa. 572, 574 (1924); St. Louis, I. Mt. & So. Ry Co. v. Starbird, 243 U. S. 592 (1917).) The record shows that the attention of the trial court was called [fol. 290] expressly to this federal statute in the Requests for Conclusions of Law filed with such court before the filing of the opinion of the said court and its entry of judgment nisi. (See Docket Entries, Record 1a, and Record 35a-43a). The subject matter of national bank shares being covered by uniform federal rule declared in the federal statute, the state courts could not determine the question of the claim for the deduction of the whole value of these national bank shares upon the ground of any local law, the question whether or not a right claimed under a federal statute or the United States Constitution was distinctly and sufficiently pleaded and brought to the notice of the state courts being itself a federal question, in the decision

of which the Supreme Court of the United States, on writ of error, is not concluded by the decision of the Supreme Court of Pennsylvania. (Carter v. Texas, 177 U. S. 442, 447 (1900).)

Having held that the tax imposed by the said Act of 1929 was a tax upon the shares of stock issued by the petitioner qua shares and that it was a tax upon the shareholders' interest in such shares, the state courts held that such tax was imposed upon shares owned by non-residents and their interest as well as those owned by residents of the state. The petitioner contended that if the tax was a tax upon shares qua shares and upon the shareholders' interest in the shares, the state of Pennsylvania was without authority to impose such tax upon the non-resident shareholders for the reason that the situs of the shares for taxation purposes was the domicile of their owners and therefore such property was beyond its taxing jurisdiction when owned by non-residents and the imposition of such tax violated the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States. The petitioner contended that the decision of the Supreme Court of the United States in [fol. 291] the case of Corry v. Baltimore, 196 U. S. 466 (1905) did not support the conclusion of the state courts, the petitioner having been incorporated under the laws of Pennsylvania October 17, 1887 (Record 24a), upwards of twenty years before the passage of the Act of June 13, 1907, Pamphlet Laws 640, and that at the time of its creation there was no law of Pennsylvania which made this state the situs for the taxation of shares of stock owned by non-residents, the law of the state as declared by the Supreme Court being to the contrary. (Commonwealth v. Standard Oil Co., 101 Pa. 119, 133 (1882).) The petitioner contended that the said Act of 1907, of which the Act of April 25, 1929, Pamphlet Laws 673, under consideration in the instant case is an amendment, was construed by the Supreme Court of Pennsylvania, in sustaining its constitutionality as a revenue statute, as not providing a new system of taxation nor introducing new taxable subjects but as simply changing the method of determining the measure of value to which the rate of tax was to be applied, (Commonwealth v. Mortgage Trust Company, 227 Pa. 163, 183 (1910)), and therefore under the authority of the de-

cision of the Supreme Court of the United States in the cited case of Corry v. Baltimore, supra, there was no authority in the state to impose a tax upon the shares owned by non-residents.

Subsequent to the issuing of the mandate of the Supreme Court of the United States the Dauphin County Court directed the entry of a judgment against your petitioner in the amount of $1457.03 upon April 20, 1936 which it held was entered in compliance with such mandate. (Record, 152a). The amount of such judgment, it was said, was determined in accordance with the method of settlement set forth in the judgment itself, which was an erroneous application of the principles set forth in its opinion.

[fol. 292] The Dauphin County Court held that the statute was unconstitutional and void as it had been applied theretofore but that it had the power to allow additional deductions which the State Supreme Court had theretofore held the legislature did not intend to allow and had not allowed by this statute. The Dauphin County Court held also that by allowing such additional deductions in the manner in which it was allowing them in the instant case not only was the statute made constitutional but there was also a compliance with the mandate of the Supreme Court of the United States.

The Dauphin County Court held that the statute was to be applied by the application of the following method of settlement: (1) That the full market value, that is, the actual value of national bank shares and Federal Reserve Bank shares was to be deducted from the amount of capital stock paid in, surplus and undivided profits (the net assets) in all cases, irrespective of whether or not they were investments of the amount of capital stock paid in, surplus and undivided profits.

(2) That neither the shares of stock defined in the said statute and exempted from tax by the language of such statute nor the United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and other obligations of the United States government and its agencies and instrumentalities were to be deducted from the amount of capital stock paid in, surplus and undivided profits at their full actual value unless the trust company-owner of such assets established as a fact that they were wholly investments of the amount of capital stock paid in, surplus and undivided

profits, that if it were not shown that they were wholly such investments, then in the case of such assets, the court said, "a proportionate deduction is to be made."

[fol. 293] (3) That the proportionate deduction was to be made according to the following formula (Record, 150a, 151a):

"(a) The numerator to consist of the capital, surplus and undivided profits, determined by the book value of the assets, less the book value of those securities for which a full deduction has been made; (b) the denominator to consist of the book value of the permanent investments, less the book value of those securities, for which a full deduction has been made: (c) such fraction to be multiplied by the book value of the securities which are to be apportioned; (d) the result thus obtained to be increased or decreased by the amount of appreciation or depreciation in the value of the securities which are apportioned."

(4) That in the case of your petitioner, since it owned Philadelphia National Bank shares of the value of $20,202, the full value thereof was to be deducted, though it had not been shown that the national bank shares were wholly investments of capital stock paid in, surplus and undivided profits, and that, since the petitioner had not shown that United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds of an actual value of $151,207, and the shares of stock defined and exempted by the language of the statute exclusive of the said national bank shares of an actual value of $135,787 were purchased, were wholly investments of the amount of capital stock paid in, surplus and undivided profits, a proportionate deduction was to be made in the manner outlined.

At this point the Dauphin County Court was confronted with the fact that this method of settlement could not be applied to the petitioner because there was nothing in the record to show book values of assets, what was meant by book values, what was meant by permanent investments and what the permanent investments owned by the petitioner were and their book value was. Nevertheless the Dauphin [fol. 294] County Court proceeded as the statement of the calculation of its judgment shows in the record (Record, 152a). It applied the actual values of each and all assets

though its formula outlined in its opinion was to the contrary. The judgment calculated was not determined in conformity with the method of settlement which the court approved and which it held complied with the mandate of the Supreme Court of the United States. It fixed the actual value of the amount of capital stock, surplus and undivided profits at $466,914; it deducted the actual value of the national bank shares in the amount of $20,202; it allowed a deduction of a portion of the actual value of the United States securities and a portion of the actual value of the remaining exempt shares of stock of a total value of $286,994 in the amount of $34,318 (Record, 152a). It arrived at such sum of $34,318 by the application of the following fraction:

$$\frac{446{,}712}{3{,}735{,}680} \times 286{,}944$$

The numerator of the fraction, $446,712, is the actual value of the amount of capital stock paid in, surplus and undivided profits, $466,914, minus the value of the national bank shares, $20,202.

The denominator of the fraction, $3,735,680, is the actual value of all the assets as shown in the stipulation of facts (Record, 19a), $3,755,882, less the actual value of the national bank shares, $20,202.

The multiplicand of the fraction, $286,944, (should be $286,994, see Record, 220a), is the actual value of the United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds, $151,207, plus the actual value of the shares of stock defined in the statute, $155,989, exclusive of the actual value of the national bank shares (Record, 22a) which had been deducted at their actual value of $20,202.

[fol. 295] As the result of the foregoing there was deducted from the actual value of the amount of the capital stock paid in, surplus and undivided profits, $466,914, the full actual value of the national bank shares, $20,202, and the sum of $34,318 which was a portion of the actual value of the United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the exempt shares of stock defined and exempted by the language of the statute exclusive of the actual value of the national bank shares of a total value of $286,994, the total deduction being $54,520 making the taxable value of the capital stock $412,394, with a resultant tax in the amount of $2,061.97 (See Record, 152a).

Thereafter the court, seeing that it had determined a judgment by a method of calculation which did not apply the method of settlement which it had held in its opinion was a constitutional interpretation, construction and application of the statute and a compliance with the mandate of the Supreme Court of the United States and finding that there was no evidence of record as to book value of assets of the petitioner, no evidence as to what constituted permanent investments, what the permanent investments were which were owned by the petitioner and what the book values of permanent investments were (see Stipulation of Facts and Supplemental Stipulation of Facts, Record, 18a-24a), proceeded to change the valuations set forth in the method of calculation whereby it had in its prior judgment of April 20, 1936 determined the amount of the proportionate deduction for the exempt shares of stock defined in the language of the statute and the United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds. (See Opinion, Record, 219a-222a). The court changed the numerator of the fraction from $446,712 to $418,650, which latter sum it says in its opinion "is obtained by adding capital, $132,625, surplus $230, undivided profits $79,042, [fol. 296] total $441,667, which are the book values less the book values of National Bank Shares, $23,017, making $418,-650." (Record 219a.) The court changed the denominator of the fraction from $3,735,680 to $2,158,045, which it says in its opinion (Record, 220a) is "the book value of permanent investments less the book value of those shares, if any, for which a full deduction has been made." The court said "that the permanent investments amount to $2,181,062, and after deducting the book value of the National Bank shares, $23,017, we get the denominator, $2,158,045." The court changed the multiplicand, $286,944 ($286,994) to $286,121. The court said (Record, 220a), "Instead of the multiplicand used by us, $286,994, the correct multiplicand is $286,-121. This error is accounted for by the fact that the tax value of the Pennsylvania Power & Light Company shares was taken instead of the book value, which is $800 less and the total book value of the exempt items amounts to $286,-121.38. There was a mistake of $73.00 in that calculation. So that correctly adding the book value of the shares which are apportioned, the amount is $286,121 instead of the figure $286,994."

After having made such alterations in the figures applying its formula the court proceeded to add the sum of $35, which latter sum it says is the "appreciation which should be added to the result of the fraction * * *" As a result of the foregoing the proportionate deduction calculation becomes (Record, 220a):

$$\frac{418,650}{2,158,045} \times 286,121 + 35 = 55,541.$$

The first fact to be noted is that there is no evidence whatsoever upon which to base any of the figures embodied within this new proportionate method of calculation. There were no such facts or factors as book values of assets of the petitioner, what constituted permanent investments, what [fol. 297] the permanent investments of the petitioner were, if any there were, what their book or actual value was, considered by the taxing officers who made the tax settlement against your petitioner. This is demonstrated by the record itself and is admitted by the Dauphin County Court and the state Supreme Court in the opinions filed in the case of Commonwealth v. Provident Trust Company of Philadelphia, 40 Dauphin Co. Repts. 146, 41 Dauphin Co. Repts., 1; 319 Pa. 385, in which case it was said that in the year 1930, the year here in question, all settlements and methods of settlement and calculations were based upon actual values. (40 Dauphin, supra, 169). There were no such facts or factors before the Dauphin County Court in the trial of this case and the entry of its original judgment, before the Supreme Court of the state of Pennsylvania when it entered its final judgment June 30, 1934 or before the Supreme Court of the United States. Not only was there no such evidence but there was no hearing nor an opportunity for a hearing given the petitioner upon such matter. The truth of these statements is established by the opinions of the court itself which appear of record (Record, 145a, 219a).

As shown, the application of the new calculation fixes a portion of the value of the United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and a portion of the value of the shares of stock exempted under the statute, exclusive of the national bank shares, of the total value of $286,994 at $55,541. Accordingly the Dauphin County Court upon January 18, 1937, applied its new cal-

culation (Record, 221a, 222a) and as a result thereof there was deduction from the actual value of the amount of the capital stock paid in, surplus and undivided profits, $466,914, the actual value of the national bank shares, $20,202, the recited proportionate deduction of $55,540 or a total deduction of $75,743, thereby fixing the taxable value at [fol. 298] $391,171 with a resultant tax in the amount of $1955.85.

Thereafter, finding that it had not ruled upon all of the exceptions filed by the petitioner, the court entered its final judgment upon January 22, 1937 in the amount of $1441.39 (Record, 222a, 223a. This final judgment differs from the judgment of $1375.45 entered January 18, 1937 solely in the amount of the interest calculation and Attorney General's Commission. All three of the judgments entered, the judgment of April 20, 1936, the judgment of January 18, 1937 and the final judgment of January 22, 1937, allow as a deduction the costs which the mandate of the Supreme Court of the United States stated was to be paid to the petitioner in the amount of $344. These costs, as the final judgment shows, are allowed as a deduction from a sum which includes interest calculated to January 22, 1937, as a result of which not only was a judgment entered against the petitioner for taxes but the petitioner was charged interest upon costs which were owing to it from the date of the decision of the Supreme Court of the United States, November 11, 1935, to January 22, 1937.

The Supreme Court of the state of Pennsylvania affirmed the final judgment which the lower court entered January 22, 1937 in favor of the Commonwealth and against the petitioner in the amount of $1441.39 and filed its opinion June 25, 1937. Its opinion is nothing more than an approval of everything done by the Dauphin County Court.

The Dauphin County Court and the state Supreme Court held that the tax imposed by the said statute was a tax upon the shares issued by the petitioner qua shares, that it was a tax upon the shareholders' interest in the shares, that it was imposed upon the shares owned by non-residents and their interest in such shares as well as those owned by the residents of the state. The petitioner contended that if the tax was a tax upon shares qua shares and upon [fol. 299] the shareholders' interest in the shares, the state of Pennsylvania was without authority to impose such

tax upon the non-resident shareholders for the reason that the situs of the shares for taxation purposes was the domicile of their owners and therefore such property was beyond its taxing jurisdiction when owned by non-residents and the imposition of such tax violated the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States. The petitioner contended that the decision of the Supreme Court of the United States in the case of Corry v. Baltimore, 196 U. S. 466 (1905) did not support the conclusion of the state courts, the petitioner having been incorporated under the laws of Pennsylvania October 17, 1887 (Record, 24a), upwards of twenty years before the passage of the Act of June 13, 1907, Pamphlet Laws 640, and that at the time of its creation there was no law of Pennsylvania which made this state the situs for the taxation of shares of stock owned by non-residents, the law of the state as declared by the Supreme Court being to the contrary. (Commonwealth v. Standard Oil Co., 101 Pa. 119, 133 (1882).) The petitioner contended that the said Act of 1907, of which the Act of April 25, 1929, Pamphlet Laws 673, under consideration in the instant case, is an amendment, was construed by the Supreme Court of Pennsylvania, in sustaining its constitutionality as a revenue statute, as not providing a new system of taxation nor introducing new taxable subjects but as simply changing the method of determining the measure of value to which the rate of tax was to be applied (Commonwealth v. Mortgage Trust Company, 227 Pa. 163, 183 (1910)), and therefore under the authority of the decision of the Supreme Court of the United States in the cited case of Corry v. Baltimore, supra, there was no authority in the state to impose a tax upon the shares owned by non-residents.

[fol. 300] The petitioner also contended that the Supreme Court of the United States in its decision filed November 11, 1935 had held that none of the shares of stock issued by your petitioner was taxable for the reason that the state statute of 1929 was discriminatory and therefore unconstitutional and void and that it had so declared in its opinion.

The sole difference between the original judgment entered by the Dauphin County Court November 24, 1933 affirmed by the opinion and judgment of the state Supreme

Court June 30, 1934, from which judgment the appeal was taken to the Supreme Court of the United States, and this latest judgment of the state Supreme Court which is said to be a compliance with the mandate of the Supreme Court of the United States is an increase in the amount of the deductions allowed by reason of the petitioner's ownership of national bank shares, United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds, the deduction allowed being a deduction of the full value of the national bank shares and a deduction of a portion of the value of the United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the shares of stock defined, described and exempted under the express language of the statute, such portion being 19 per centum of their entire value.

The state courts now hold that the statute as it is now construed and applied in the tax settlement embodied in the judgment entered against the petitioner is constitutional and complies with the mandate of the Supreme Court of the United States. The state courts adhere to the conclusion that under the new method of settlement there is no taxation of the United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the shares of stock defined, described and exempted under the express language of the statute and no discrimination against such assets though the state courts adhere to the application [fol. 301] of the "proportionate" method of settlement whereby only a portion of non-taxable and exempt assets are deducted and wherein the entire value of non-taxable assets such as national bank shares and Federal Reserve Bank shares are deducted despite the fact that there is no distinction or difference in degree of exemption and non-taxability between these various assets. The petitioner contended that the discrimination between these assets is manifest and the violation of the due process of law and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States is clear.

The state courts hold that they have the power to amend the statute by allowing additional deductions and changing the method of settlement though such amendment of the statute and change in the method of settlement are contrary to every decision of the state courts to and including

the final decision of the state Supreme Court filed June 30, 1934 from which the first appeal was taken to the Supreme Court of the United States. The state courts hold that the tax is a tax upon shares qua shares and that there is constitutional authority to tax the shares of non-resident shareholders though it is manifest that the statute is a revenue statute and not a statute regulating the issuing of the shares of stock of a domestic corporation.

The petitioner contended that the "proportionate" method of settlement whereby a portion of the United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the shares of stock defined and exempted under the express language of the statute was deducted imposes tax upon such securities, bonds and shares of stock, that such taxation is the necessary result of the application of such method of settlement, that the formula and calculation includes the value of such assets in the denominator of the fraction used to determine the portion of such assets to be deducted, the value of the United States [fol. 302] securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the shares of stock defined and exempted in the express language of the statute being included within the denominator of the fraction set forth in the judgment entered against the petitioner, to wit, $\frac{418,650}{2,158,045}$, it being self-evident that the larger the denominator of such fraction the less will be the amount of the deduction allowed and the less the amount of the deduction the larger the amount of tax imposed.

The petitioner contended that the discrimination against the United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the shares of stock defined and exempted by the express language of the statute is likewise self-evident, for the method of settlement approved in the Girard Trust Company case (Record, 182a) and in the instant case (Record, 221a) requires that the full value of national bank shares and Federal Reserve Bank shares, both of which are shares of stock which are included within the shares of stock defined, described and exempted under the express language of the statute, be deducted in all cases and only a portion of the value of the United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds

and the other members of the class of shares of stock defined and exempted under the express language of the statute is required to be deducted unless it can be established as a fact by the trust company-owner that such assets are wholly investments of the amount of capital stock paid in, surplus and undivided profits. The petitioner contended that it is self-evident that if the entire value of national bank shares and Federal Reserve Bank shares be deducted in order that they might not be included in the measure of the tax, a deduction of the entire value of all non-taxable and exempt assets is required in order that they be not taxed and be not discriminated against.

[fol. 303] The petitioner contended that there is no authority in the state courts to make a tax settlement against it, for the reason that the Supreme Court of the United States, federal questions having been raised, upon appeal held that the statute was void because discriminatory, that such decision of the federal court was final and that there was no authority in the state courts to amend the statute by allowing additional deductions, that the allowance of such additional deductions was judicial legislation in violation of Section 1, Article IX, and Section 1, Article II, of the Constitution of Pennsylvania and the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States.

The petitioner contended that under the decision and mandate of the Supreme Court of the United States judgment should have been entered for the petitioner with costs.

19. The statutory and constitutional questions raised are:

1. Does the judgment entered by the Supreme Court of the state of Pennsylvania comply with the mandate of the Supreme Court of the United States?

2. The Supreme Court of the United States upon appeal, federal questions having been raised, having held the Act of April 25, 1929, Pamphlet Laws 673, discriminatory and therefore unconstitutional and void, does the Supreme Court of the state of Pennsylvania, to which court the mandate of the Supreme Court of the United States was issued and directed in this case and which state court admits the unconstitutionality of the said statute, have the power to amend the statute by allowing exemptions and deductions from tax in addition to those exemptions and deduc-

tions allowed by the legislature in the enactment of the statute and thereupon under the alleged authority of the statute so amended and the mandate of the Supreme Court of the United States to enter a judgment for tax against the [fol. 304] petitioner?

3. The Supreme Court of the United States upon appeal, federal questions having been raised, having held the Act of April 25, 1929, Pamphlet Laws 673 unconstitutional and void and having reversed the judgment of the Supreme Court of Pennsylvania and issued its mandate to such state court, does the final judgment entered by the state Supreme Court construing and applying the said state statute constitute judicial legislation in violation of Section 1 of Article II of the Constitution of the state of Pennsylvania and the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States?

4. The Supreme Court of the United States upon appeal, federal questions having been raised, having held the Act of April 25, 1929, Pamphlet Laws 673 unconstitutional and void and having reversed the judgment of the Supreme Court of Pennsylvania and issued its mandate to such state court, does the state Supreme Court have the authority to revise its judgment by entering a new judgment based upon facts not in evidence?

5. Does the final judgment entered by the state Supreme Court violate Section 1 of Article IX of the Constitution of the state of Pennsylvania and the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States by reason of the fact that the judgment entered by the state Supreme Court under the alleged authority of the said Act of April 25, 1929, Pamphlet Laws 673 is based upon and embodies a method of settlement differing from that imposed and applied by the taxing officers of the state to other corporations made subject to the said statute in the same tax and calendar year ending December 31, 1930?

[fol. 305] 6. Does the said state statute of April 25, 1929, Pamphlet Laws 673, under authority of which the tax settlement embodied in the judgment entered against the petitioner was made, violate Clause 2 of Section 8 of Article I of

the Constitution of the United States which gives power to the Congress of the United States to borrow money on the credit of the United States, Section 3701 Revised Statutes of the United States, 31 U. S. C. Sec. 742, which exempts obligations of the United States from state taxation, and the Fourteenth Amendment to the Constitution of the United States which forbids a state to deprive any person of life, liberty or property without due process of law and to deny to any person within its jurisdiction the equal protection of the laws, by reason of the fact that in the settlement of tax made against your petitioner, embodied in the judgment entered by the Court of Common Pleas of Dauphin County and affirmed by the Supreme Court of the state of Pennsylvania, to determine the taxable value to which the rate of tax was applied in order to determine the amount of the tax liability, there was an exemption from taxation allowed by deducting from the value of the net assets of the petitioner, ($467,714 which sum was changed by the state courts to $466,914), (the amount of the capital stock paid in, the surplus and undivided profits), the full value of certain assets owned by the petitioner, to wit, Philadelphia National Bank shares of the value of $20,202, which national bank shares are included within the class of exempt assets owned by the petitioner described and defined in the said state statute consisting of shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, [fol. 306] or relieved from the payment of capital stock tax or tax on shares, the total value of which exempt shares of stock so described and defined in the statute, including the said value of the national bank shares, is $155,989 and only a portion of the value of the non-taxable United States securities owned by your petitioner of a total value of $134,907 was deducted, the portion of the value of the non-taxable United States securities so deducted being 418,650

2,158,045

of 134,907 or $26,171 which is 19 per centum of their full value, all of which shares of stock and United States securities were included at their full value in the value of your petitioner's total assets, ($3,755,882), and (except the national bank shares) within the denominator of the said fraction, $2,158,045, there being in the said settlement of tax a diminution of tax liability by reason and on account

of the petitioner's ownership of the national bank shares which are deducted at their full value and an increase of tax liability by reason and on account of its ownership of the said United States securities of the value of $134,907, only a portion of the value of which was deducted, with a consequent taxation of and discrimination against said United States securities, your petitioner and the owners of its shares by reason of its ownership thereof, the petitioner contending that, if the state courts have the power to amend the state statute by allowing exemptions and deductions in addition to those allowed and defined by the legislature in the said statute after the entry of the judgment of the Supreme Court of the United States November 11, 1935 holding said statute discriminatory and void and if such amendment of the statute by the state courts is not judicial legislation in violation of state and federal constitutions, then and in that case for the purpose of the taxation of the capital, capital stock or the shares of stock issued by the [fol. 307] petitioner, the petitioner must be regarded as though it did not own such United States securities and that they, together with the amount of your petitioner's liabilities, should be deducted at their full value from the value of the total assets of the petitioner?

7. Does the said state statute of April 25, 1929, Pamphlet Laws 673, under authority of which the tax settlement embodied in the judgment entered against the petitioner was made, violate the provisions of the Act of Congress of the United States of August 29, 1916, c. 416, 39 Stat. 548, Sec. 11, Act of Congress of the United States of July 21, 1921, c. 51, 42 Stat. 145, and Act of the Philippine Legislature Number 2940 approved February 5, 1921, under the provisions of which Philippine Islands 5½% Public Improvement Loan due Aug. 1, 1941 bonds were issued and of which your petitioner owned bonds of the value of $10,900, and Act of Congress of the United States of February 6, 1905, c. 453, 33 Stat., part 1, 689, Clause 2 of Section 8 of Article I of the Constitution of the United States which gives power to the Congress of the United States to borrow money on the credit of the United States and the Fourteenth Amendment to the Constitution of the United States which forbids a state to deprive any person of life, liberty or property without due process of law and to deny to any person within its jurisdiction the equal protection of the laws, by

reason of the fact that in the settlement of tax made against your petitioner, embodied in the judgment entered by the Court of Common Pleas of Dauphin County and affirmed by the Supreme Court of the State of Pennsylvania, to determine the taxable value to which the rate of tax was applied in order to determine the amount of the tax liability, [fol. 308] there was an exemption from taxation allowed by deducting from the value of the net assets of the petitioner, ($467,714 which sum was changed by the state courts to $466,914), (the amount of the capital stock paid in, the surplus and undivided profits), the full value of certain assets owned by the petitioner, to wit, Philadelphia National Bank shares of the value of $20,202, which national bank shares are included within the class of exempt assets owned by the petitioner described and defined in the said state statute consisting of shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of capital stock tax or tax on shares, the total value of which exempt shares of stock so described and defined in the statute, including the said value of the national bank shares, is $155,989 and only a portion of the value of the non-taxable Philippine Islands bonds owned by your petitioner of a total value of $10,900 was deducted, the portion of the value of the non-taxable Philippine Islands bonds so deducted being $\frac{418,650}{2,158,045}$ of 10,900 or $2,114 which is 19 per centum of their full value, all of which shares of stock and Philippine Islands bonds were included at their full value in the value of your petitioner's total assets, ($3,755,882), and (except the national bank shares within the denominator of the said fraction, $2,158,045, there being in the said settlement of tax a diminution of tax liability by reason and on account of the petitioner's ownership of the national bank shares which are deducted at their full value and an increase of tax liability by reason and on account of its ownership of the said Philippine Islands bonds of the value of $10,900, only a portion of the value of which was deducted, with a consequent taxation of and discrimination against said Philippine Islands bonds, your petitioner and the owners of its shares by reason of its own- [fol. 309] ership thereof, the petitioner contending that, if the state courts have the power to amend the state statute

by allowing exemptions and deductions in addition to those allowed and defined by the legislature in the said statute after the entry of the judgment of the Supreme Court of the United States November 11, 1935 holding said statute discriminatory and void and if such amendment of the statute by the state courts is not judicial legislation in violation of state and federal constitutions, then and in that case for the purpose of the taxation of the capital, capital stock or the shares of stock issued by the petitioner, the petitioner must be regarded as though it did not own such Philippine Islands bonds and that they, together with the amount of your petitioner's liabilities, should be deducted at their full value from the value of the total assets of the petitioner?

8. Does the said state statute of April 25, 1929, Pamphlet Laws 673, under authority of which the tax settlement embodied in the judgment entered against the petitioner was made, violate the provisions of "The Federal Farm Loan Act" of the United States Congress of July 17, 1916, c. 245, 39 Stat. 360, Secs. 16, 26, under the provisions of which Joint Stock Land Bank bonds were issued and of which your petitioner owned bonds of the value of $5,400, Clause 2 of Section 8 of Article I of the Constitution of the United States which gives power to Congress to borrow money on the credit of the United States and the Fourteenth Amendment to the Constitution of the United States which forbids a state to deprive any person of life, liberty or property without due process of law and to deny to any person within its jurisdiction the equal protection of the laws, by reason of the fact that in the settlement of tax made against your [fol. 310] petitioner, embodied in the judgment entered by the Court of Common Pleas of Dauphin County and affirmed by the Supreme Court of the State of Pennsylvania, to determine the taxable value to which the rate of tax was applied in order to determine the amount of the tax liability, there was an exemption from taxation allowed by deducting from the value of the net assets of the petitioner, ($467,714 which sum was changed by the state courts to $466,914), (the amount of the capital stock paid in, the surplus and undivided profits), the full value of certain assets owned by the petitioner, to wit, Philadelphia National Bank shares of the value of $20,202, which national bank shares are included within the class of exempt assets owned by the petitioner described and defined in the said state statute con-

sisting of shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of capital stock tax or tax on shares, the total value of which exempt shares of stock so described and defined in the statute, including the said value of the national bank shares, is $155,989 and only a portion of the value of the non-taxable Joint Stock Land Bank bonds owned by your petitioner of a total value of $5,400 was deducted, the portion of the value of the non-taxable Joint Stock Land Bank bonds so deducted being $\frac{418,650}{2,158,045}$ of 5,400 or $1047 which is 19 per centum of their full value, all of which shares of stock and Joint Stock Land Bank bonds were included at their full value in the value of your petitioner's total assets, ($3,755,882), and (except the national bank shares) within the denominator of the said fraction, $2,158,045, there being in the said settlement of tax a diminution of tax liability by reason and on account of the petitioner's ownership of the national bank shares which are deducted at their full [fol. 311] value and an increase of tax liability by reason and on account of its ownership of the said Joint Stock Land Bank bonds of the value of $5,400, only a portion of the value of which was deducted, with a consequent taxation of and discrimination against said Joint Stock Land Bank bonds, your petitioner and the owners of its shares by reason of its ownership thereof, the petitioner contending that, if the state courts have the power to amend the state statute by allowing exemptions and deductions in addition to those allowed and defined by the legislature in the said statute after the entry of the judgment of the Supreme Court of the United States November 11, 1935 holding said statute discriminatory and void and if such amendment of the statute by the state courts is not judicial legislation in violation of state and federal constitutions, then and in that case for the purpose of the taxation of the capital, capital stock or the shares of stock issued by the petitioner, the petitioner must be regarded as though it did not own such Joint Stock Land Bank bonds and that they, together with the amount of your petitioner's liabilities, should be deducted at their full value from the value of the total assets of the petitioner?

[fol. 312] 9. Does the said state statute of April 25, 1929, Pamphlet Laws 673, under authority of which the tax settle-

ment embodied in the judgment entered against the petitioner was made, violate Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws;" and the Fourteenth Amendment to the Constitution of the United States which forbids a state to deprive any person of life, liberty or property without due process of law and to deny to any person within its jurisdiction the equal protection of the laws, by reason of the fact that in the settlement of tax made against your petitioner, embodied in the judgment entered by the Court of Common Pleas of Dauphin County and affirmed by the Supreme Court of the State of Pennsylvania, to determine the taxable value to which the rate of tax was applied in order to determine the amount of the tax liability, there was an exemption from taxation allowed by deducting from the value of the net assets of the petitioner, ($467,714 which sum was changed by the state courts to $466,914), (the amount of the capital stock paid in, the surplus and undivided profits), the full value of certain assets owned by the petitioner, to wit, Philadelphia National Bank shares of the value of $20,202, which national bank shares are included within the class of exempt assets owned by the petitioner described and defined in the said state statute consisting of shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of capital stock tax or tax on shares, the total value of which exempt shares of stock so described and defined in the statute, including the said value of the national bank shares, is $155,989 and only a portion of the [fol. 313] value of the non-taxable shares of stock owned by your petitioner of a total value of $135,787 was deducted, the portion of the value of the non-taxable shares of stock so deducted being, $\frac{418,650}{2,158,045}$ of 135,787 or $26,323 which is 19 per centum of their full value, all of which shares of stock so described, defined and exempted under the language of the statute, including therein the said national bank shares, of a total value of $155,989 were included at their full value in the value of your petitioner's total assets, ($3,755,882), and (except the national bank shares) within the

denominator of the said fraction, $2,158,045, there being in the said settlement of tax a diminution of tax liability by reason and on account of the petitioner's ownership of the natonal bank shares which are deducted at their full value and an increase of tax liability by reason and on account of its ownership of the said shares of stock of the value of $135,787, only a portion of the value of which was deducted, with a consequent taxation of and discrimination against said shares of stock, your petitioner and the owners of its shares by reason of its ownership thereof, the said shares of stock being similarly exempt under the language of the state statute as are the national bank shares, the petitioner contending that for the purpose of the taxation of the capital, capital stock or the shares of stock issued by the petitioner, the petitioner must be regarded as though it did not own such shares of stock and that they, together with the amount of your petitioner's liabilities, should be deducted at their full value from the value of the total assets of the petitioner?

[fol. 314] 10. Does the state statute of April 25, 1929, Pamphlet Laws 673, under authority of which the tax settlement embodied in the final judgment which the state Supreme Court entered against the petitioner was made, violate the state and federal constitutional and statutory provisions recited in the Assignments of Error by reason of the fact that by the settlement made under authority of the statute there is (1) in the case of trust companies owning Federal Reserve Bank shares and national bank shares a deduction of their entire value from the value of the net assets of the trust company, (2) in the case of trust companies owning United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and obligations of federal agencies and instrumentalities a deduction of a portion of their value from the value of the net assets of the trust company, which portion in the case of your petitioner was 19 per centum of the entire value of such non-taxable and exempt assets, (3) in the case of trust companies owning shares of stock exempted under the language of the said state statute consisting of "shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of capital stock tax or tax on shares" a deduction of a portion of

their value from the value of the net assets of the trust company, which portion in the case of your petitioner was 19 per centum of the entire value of such non-taxable and exempt assets, while (4) in the case of other trust companies the entire value of such non-taxable and exempt United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds, obligations of federal agencies and instrumentalities and such shares of stock is deducted from the value of the net assets of the trust company, the tax liability being determined by the kind and amount of assets owned by each trust company without regard to the value of the shares of stock issued by each trust company and the interest of the shareholders therein?

[fol. 315] 11. Does the said state statute of April 25, 1929, Pamphlet Laws 673 and such statute as it was construed and applied in the tax settlement and judgment entered against the petitioner violate Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides that no state shall deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws by reason of the fact that the Supreme Court of Pennsylvania in its opinion and judgment affirming the judgment of the Dauphin County Court and the settlement of tax made against your petitioner construed and upheld the said Act of April 25, 1929, supra, as imposing a tax upon the shares of stock issued by your petitioner qua shares and upon shares owned by non-residents of the state of Pennsylvania? The petitioner contended that the statute was unconstitutional and void and had been so declared by the Supreme Court of the United States, that the tax imposed was not a tax upon the shares qua shares, upon the shareholders' interest in the shares, and that if the tax, as it was imposed in the settlement and judgment entered against it, be a tax which is imposed legally and constitutionally upon the shares issued by it, upon the interest of the shareholders in the shares owned by them, shares owned by non-residents of the state are beyond the taxing jurisdiction of the state and their taxation violated the recited constitutional provisions.

. . . . . .

[fol. 316] 20. The petitioner believes and therefore avers that the said state statute of April 25, 1929, Pamphlet

Laws 673, under authority of which the state Supreme Court entered its final judgment against the Schuylkill Trust Company is unconstitutional and void and has been held to be unconstitutional and void by the Supreme Court of the United States in this same case by its decision filed November 11, 1935 (296 U. S. 113), that the judgment entered by the said state Supreme Court violates the mandate of the Supreme Court of the United States issued in such case and that the construction and application of the said state statute embodied in the judgment entered against the petitioner by the state Supreme Court under the alleged authority of the said state statute constitute judicial legislation and are repugnant to the hereinbefore recited provisions of the Constitution of the state of Pennsylvania, the Constitution of the United States and the statutes of the United States, constitute a taxation of and a discrimination against obligations, securities and instrumentalities of the United States government and violate Section 1 of Article IX and Section 1 of Article II of the Constitution of the state of Pennsylvania, Clause 2 of Section 8 of Article I of the Constitution of the United States giving to the Congress of the United States the power to borrow money on the credit of the United States and constitute a deprivation of property without due process of law and a denial of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and the decisions of the Supreme Court of the United States, in particular the decisions of such court in the cases of Schuylkill Trust Company, Appellant, vs. The Commonwealth of Pennsylvania, 296 U. S. 113 (1935), Missouri v. Gehner, 281 U. S. 313 (1930), MacAllen Co. v. Mass., 279 U. S. 620 (1929), Bank of California v. Richardson, 248 U. S. 476 (1919) and Corry v. Baltimore, 196 U. S. 466 (1905).

[fol. 317] 21. This case is reviewable by the Supreme Court of the United States on appeal under the Act of Congress of February 13, 1925, c. 229, 43 Stat. 936, Act of Congress of January 31, 1928, c. 14, 45 Stat. 54, which provides: "That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal" and the Act of Congress of April 26, 1928, c. 440, 45 Stat. 466, because there was clearly drawn into question from the beginning of the litigation the validity of the said state

statute of April 25, 1929, Pamphlet Laws 673 and its construction and application to the petitioner and its shareholders on the ground that the said statute was unconstitutional and void and that as construed and applied in the tax settlement made against this petitioner embodied in the final judgment of the state Supreme Court it constituted judicial legislation and that the said state statute and its construction and application against the petitioner and its shareholders are repugnant to the hereinbefore recited statutes of the United States, the hereinbefore recited provisions of the Constitution of the state of Pennsylvania and the Constitution of the United States and the decisions of the Supreme Court of the United States, in particular the decisions of such Court in the cases of Schuylkill Trust Company, Appellant, vs. The Commonwealth of Pennsylvania, 296 U. S. 113 (1935), Missouri v. Gehner, 281 U. S. 313 (1930), MacAllen Co. v. Mass. 279 U. S. 620 (1929), Bank of California v. Richardson, 248 U. S. 476 (1919) and Corry v. Baltimore, 196 U. S. 466 (1905) and the decision of the Supreme Court of Pennsylvania and its judgment rendered thereon against your petitioner was in favor of the validity of the said statute of the state.

[fol. 318] 22. The petitioner submits herewith a copy of the Record, Brief for Appellant, Brief for Appellee in the Supreme Court of Pennsylvania, a copy of the opinion of the Supreme Court of Pennsylvania as written by Mr. Justice Stern filed June 25, 1937 affirming the judgment of the Court of Common Pleas of Dauphin County and a copy of the Petition presented to the Supreme Court of Pennsylvania for reargument of the appeal. The petitioner presents herewith also a separate typewritten Statement as to Jurisdiction in accordance with the provisions of Rule 12 of the Supreme Court of the United States.

[fol. 319] ASSIGNMENTS OF ERROR

And the said petitioner assigns the following errors in the record and proceedings in the said case:

1. The Supreme Court of the state of Pennsylvania erred in entering its final judgment affirming the final judgment of the Court of Common Pleas of Dauphin County directing the entry of judgment in favor of the Commonwealth

of Pennsylvania and against the petitioner, the Schuylkill Trust Company, in the sum of $1441.39.

2. The Supreme Court of the state of Pennsylvania erred in not directing judgment to be entered in favor of the Schuylkill Trust Company and against the Commonwealth of Pennsylvania together with costs.

3. The Supreme Court of the state of Pennsylvania erred in holding that the opinion, decision and mandate of the Supreme Court of the United States authorized and commanded the Court of Common Pleas of Dauphin County to revise the judgment affirming a tax settlement made by the taxing officers of the state of Pennsylvania against the Schuylkill Trust Company for the tax and calendar year ending December 31, 1930 under authority of the State statute of April 25, 1929, Pamphlet Laws 673, which such court entered against the Schuylkill Trust Company upon November 24, 1933 in the amount of $1863.17 and which was affirmed by the Supreme Court of the state of Pennsylvania upon June 30, 1934 and which was reversed by the Supreme Court of the United States upon November 11, 1935 by making a tax settlement against the Schuylkill Trust Company for the same tax and calendar year and entering a judgment against the said Schuylkill Trust Company for the amount of such tax settlement by construing and applying the said state statute of April 25, 1929, Pamphlet Laws [fol. 320] 673 as imposing a tax upon all shares of stock qua shares issued by the Schuylkill Trust Company owned by residents and non-residents of the state and determining the taxable value of such shares of stock to which the millage rate of tax was applied by adding together the actual value of the amount of the capital stock paid in, the surplus and undivided profits ($466,914) and deducting therefrom the full value ($20,202) of national bank shares owned by it and deducting therefrom also a portion ($26,323) of the full value ($135,787) of the shares of stock owned by it exempted from the tax under the express language of the statute and deducting therefrom also a portion ($26,171) of the full value ($134,907) of the United States securities owned by it, a portion ($2,114) of the full value ($10,900) of the Philippine Islands bonds owned by it, a portion ($1,047) of the full value ($5400) of the Joint Stock Land Bank bonds owned by it and imposing a tax at the rate of five mills upon the taxable value so determined in the

amount of $391,171, with a resultant tax in the amount of $1955.85 in accordance with the following statements set forth in the opinions of the Court of Common Pleas of Dauphin County filed January 18, 1937 and January 22, 1937 (Record, 221a, 223a):

"Statement

"Capital stock and undivided profits (book value)		$440,667
Appreciation		25,247
Capital stock and undivided profits (market value)		$466,914
Less:		
(a) Full deduction for shares of National Bank	$20,202	
(b) Proportionate deduction for U. S. Securities and exempt shares of stock, $\frac{418,650}{2,158,045} \times 286,121 + 35 =$	55,541	75,743
Total value of capital stock		$391,171
[fol. 321] Tax on same at 5 mills		$1,955.85
Amount paid on account		570.43
Balance due Commonwealth		$1,385.42"

"Statement

"Balance due Commonwealth as directed in our opinion filed January 18, 1937	$1,385.42
Interest from April 8, 1933 to January 22, 1937	314.95
	$1,700.37
Attorney General's commission	85.02
	$1,785.39
Less Costs allowed appellant in the Mandate of the Supreme Court of the United States	344.00
Total	$1,441.39"

4. The Supreme Court of the state of Pennsylvania erred in that its construction and application of the said Act of Assembly of the state of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, by the judgment which it entered against the Schuylkill Trust Company constitute judicial legislation amending the statute by writing into it a provision granting additional exemptions from taxation in violation of Section 1 of Article II of the Constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the petitioner and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

5. The Supreme Court of the state of Pennsylvania erred in that the Act of Assembly of the state of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it entered its final judgment against the Schuylkill Trust Company, is unconstitutional and void in that it imposes a tax upon and discriminates against United States securities owned by the petitioner in vio-
[fol. 322] lation of Clause 2 of Section 8 of Article I of the Constitution of the United States which gives the Congress of the United States power to borrow money on the credit of the United States, Section 3701 Revised Statutes of the United States, 31 U. S. C. Sec. 742, which exempts obligations of the United States from state taxation and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the petitioner and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

6. The Supreme Court of the state of Pennsylvania erred in that the Act of Assembly of the state of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it entered its final judgment against the Schuylkill Trust Company, is unconstitutional and void in that it imposes a tax upon and discriminates against Philippine Islands bonds owned by the petitioner in violation of the provisions of the Act of Congress of the United States of August 29, 1916, c. 416, 39 Stats. 548, Sec. 11, Act of Congress of the United States of July 21, 1921, c. 51, 42 Stat. 145, and Act of the Philippine Legislature Number 2940 approved February 5, 1921, Act of Congress of Feb-

ruary 6, 1905, c. 453, 33 Stat., part 1, 689, Clause 2 of Section 8 of Article I of the Constitution of the United States which gives the Congress of the United States power to borrow money on the credit of the United States and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the petitioner and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

[fol. 323] 7. The Supreme Court of the state of Pennsylvania erred in that the Act of Assembly of the state of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it entered its final judgment against the Schuylkill Trust Company, is unconstitutional and void in that it imposes a tax upon and discriminates against Joint Stock Land Bank bonds owned by the petitioner in violation of the provisions of "The Federal Farm Loan Act" of the United States Congress of July 17, 1916, c. 245, 39 Stat. 360, Sec. 16, Sec. 26, Clause 2 of Section 8 of Article I of the Constitution of the United States which gives the Congress of the United States power to borrow money on the credit of the United States and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the petitioner and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

8. The Supreme Court of the state of Pennsylvania erred in that the Act of Assembly of the state of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it entered its final judgment against the Schuylkill Trust Company, is unconstitutional and void in that it imposes a tax upon and discriminates against shares of stock described and defined in the statute as shares of stock of corporations liable to pay to the Commonwealth a capital stock tax or relieved from the payment of capital stock tax or tax on shares owned by the petitioner in violation of Section 1 of Article IX of the Constitution of Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the petitioner and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

[fol. 324] 9. The Supreme Court of the state of Pennsyl-

vania erred in that the Act of Assembly of the state of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it entered its final judgment against the Schuylkill Trust Company, is unconstitutional and void in that it has been held to authorize the deduction of assets consisting of shares of stock of Federal Reserve Banks and National Banks "flat", i. e. at their full value, from the amount of capital stock paid in, the surplus and undivided profits which is the value of the net assets, irrespective of whether or not such shares of stock were purchased out of the capital stock paid in, the surplus and undivided profits, and to authorize the apportionment of United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and a class of assets owned by the petitioner and described in the statute as shares of stock of corporations liable to pay to the Commonwealth a capital stock tax or relieved from the payment of capital stock tax or tax on shares, between the amount of its capital stock paid in, the surplus and undivided profits (the value of the net assets) and the amount of its liabilities, for the purpose of determining what portion of the value of the said United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and shares of stock is to be deducted from the amount of the capital stock paid in, the surplus and undivided profits (the value of the net assets) in order to determine the taxable value to which the rate of tax is to be applied and the consequent amount of tax required to be paid and for that purpose to include in the value of the petitioner's total assets the full value of assets consisting of United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the said shares of stock described in the statute, the result of which is to discriminate against, to impose a tax upon and to infringe the immunity from state taxation of the said United States [fol. 325] securities, Philippine Islands Bonds, Joint Stock Land Bank Bonds and to discriminate against and impose a tax upon the said shares of stock described in the statute. Such construction and application of the statute by the court violates Section 1 of Article IX and Section 1 of Article II of the Constitution of Pennsylvania, Section 1 of the Fourteenth Amendment to the Constitution of the United States and Clause 2 of Section 8 of Article I of the Constitution of the United States by discriminating

against the petitioner and its shareholders by reason of its ownership of the said securities, bonds and shares of stock and by depriving the petitioner and its shareholders of their property without due process of law and impairing the power of the Congress of the United States to borrow money on the credit of the United States because under the settlement of the tax and the judgment entered against the petitioner the amount of the tax settled against it was increased by reason of its ownership of United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds and exempt shares of stock by denying to the petitioner and its shareholders the equal protection of the laws and discriminating against such non-taxable assets and against it, the petitioner, and its shareholders because of its ownership of such assets, the said court having allowed in settlements made in the cases of some trust companies which were subject to the said state statute a deduction from the value of the net assets of the full value of the shares of stock described in the statute, the full value of United States securities and obligations of federal agencies and instrumentalities and national bank shares and shares of stock of Federal Reserve Banks in order to determine the taxable value to which the rate of tax was applied, whereas, under the method of settlement and calculation of the tax applied to the petitioner no such "flat" deduction was allowed of the said exempt and non-taxable [fol. 326] assets owned by the petitioner consisting of United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and exempt shares of stock described in the statute. The necessary effect and consequence of such construction of the statute and such method of settlement and calculation of the tax is that no tax is imposed in the case of trust companies the assets of which consist solely of such exempt and non-taxable shares of stock or securities and tax is imposed in cases of trust companies if any of their assets consist of United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds and settlement is made by allowing "proportionate" instead of "[redacted]" deductions, tax liability being determined not only by the kind of assets owned by each trust company without regard to the value of the shares of stock issued by the trust company and the value of the shareholders' interest in such shares of stock but also by

whether or not a "flat" or a "proportionate" deduction of the exempt and non-taxable assets is allowed.

10. The Supreme Court of the state of Pennsylvania erred in that the Act of Assembly of the state of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it entered its final judgment against the Schuylkill Trust Company, is unconstitutional and void in that it has been held to impose a tax upon the shares of stock issued by the petitioner and other trust companies as shares and upon the interest of the shareholders, both residents and non-residents of the state of Pennsylvania, in such shares and that such tax was imposed by the method of settlement which was applied in the settlement of the tax made against the petitioner wherein and whereby the amount of the tax required to be paid is determined by the application of the rate of tax to a value of assets determined by deducting from the value of the total assets of [fol. 327] the trust company the amount of its liabilities, the full value of national bank shares and Federal Reserve Bank stock and a portion of the value of a class of assets owned by the trust company and described in and expressly exempted by the statute as shares of stock of corporations liable to pay to the Commonwealth a capital stock tax, or relieved from the payment of a capital stock tax or tax on shares, and a portion of the value of the non-taxable United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds owned by the petitioner, which portion so to be deducted is such portion of the value of such shares of stock, securities and bonds as is determined by the use of a formula consisting of a fraction the numerator of which consists of the amount of the capital stock paid in, surplus and undivided profits determined by book values less the book value of those investments, if any, for which a full deduction has been made and the denominator of which consists of the book value of the permanent investments less the book value of those investments, if any, for which a full deduction has been made; which fraction is to be multiplied by a multiplicand consisting of the book value of the shares of stock, securities and bonds which are to be apportioned and the result thus obtained is increased or diminished by the amount of appreciation or depreciation in the shares of stock, securities and bonds thus apportioned. The result of such

method of settlement of the tax affirmed by the said court is to discriminate against and to impose a tax upon the said shares of stock described in and expressly exempted from tax by the statute and the United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds and upon all other assets of the trust company not deducted at their full value from the value of the net assets, among which in the case of the petitioner were United States securities, Philippine Islands bonds, Joint Stock Land Bank [fol. 328] bonds and such exempt shares of stock described in and expressly exempted by the statute which were included in the value of the petitioner's total assets at the value of $286,994, and under the method of settlement applied and the judgment entered against the petitioner there was a deduction of only 19 per centum of such value, to wit, a deduction in the amount of $55,541, whereby there was a violation of Section 1 of Article IX of the Constitution of Pennsylvania, the United States statutes recited in the Assignments of Error and whereby the petitioner and its shareholders were deprived of their property without due process of law and have had denied to them the equal protection of the laws and the power of Congress of the United States to borrow money on the credit of the United States was impaired in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States and Clause 2 of Section 8 of Article I of the Constitution of the United States.

11. The Supreme Court of the state of Pennsylvania erred in that the Act of Assembly of the state of Pennsylvania aproved April 25, 1929, Pamphlet Laws 673, under authority of which it entered its final judgment against the Schulykill Trust Company, is unconstitutional and void in that under its authority the said court approved a tax settlement against the petitioner wherein and whereby the amount of tax required to be paid is increased by reason and on account of the petitioner's ownership of non-taxable United States securities, Philippine Islands bonds and Joint Stock Land Bank bonds and the amount of the tax is lessened in the cases of all other trust companies in proportion as such other trust companies invested in shares of stock described in the said statute as shares of stock issued by corporations liable to pay to the Commonwealth a capital stock tax or relieved from the payment of a capi-

tal stock tax or tax on shares, Federal Reserve Bank shares, [fol. 329] National Bank shares and other assets held to be deductible "flat," i. e. at their full value, from the net assets in order to determine the taxable value and consequent tax liability, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United Staes by depriving the petitioner and its shareholders of their property without due process of law and denying to them the equal protection of the laws, Clause 2 of Section 8 of Article I of the Constitution of the United States by impairing the power of Congress of the United States to borrow money on the credit of the United States and the decisions of the Supreme Court of the United States in the cases of Schuylkill Trust Company, Appellant, vs. The Commonwealth of Pennsylvania, 296 U. S. 113 (1935), Missouri v. Gehner, 281 U. S. 313 (1930), MacAllen Co. v. Mass., 279 U. S. 620 (1929) and Bank of California v. Richardson, 248 U. S. 476 (1919).

12. The Supreme Court of the state of Pennsylvania erred in that having held that the Act of Assembly of the state of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it entered its final judgment against the Schuylkill Trust Company, authorized the deduction of assets consisting of shares of stock of Federal Reserve Banks and National Banks "flat", i. e. at their full value, from the amount of capital stock paid in, the surplus and undivided profits (the value of the net assets) irrespective of whether or not such shares of stock were purchased out of the amount of capital stock paid in, the surplus and undivided profits, and in the tax settlement made against the petitioner upon which it based such judgment having made such "flat" deduction of Philadelphia National Bank shares owned by the petitioner of the value of $20,202 from the amount of the capital stock paid in, the surplus and [fol. 330] undivided profits irrespective of whether or not they were purchased out of the amount of capital stock paid in, the surplus and undivided profits, the United States securities, Philippine Islands bonds, Joint Stock Land Bank bonds and the shares of stock exempted from tax and described in the statute and owned by the petitioner of the value of $286,994 were not in like manner deducted "flat", and as a consequence the said judgment discriminated against the petitioner and the said Act of April 25, 1929,

Pamphlet Laws 673, which was held to authorize the entry of such judgment discriminates against the petitioner and all trust companies which own similar assets and are denied "flat" deductions from net assets in violation of Section 1 of Article IX of the Constitution of Pennsylvania which requires that "All taxes shall be uniform upon the same class of subjects, within the territorial limits of the authority levying the tax and shall be levied and collected under general laws" and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the petitioner and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

13. The Supreme Court of the state of Pennsylvania erred in that the Act of Assembly of the state of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, under authority of which it entered its final judgment against the Schuylkill Trust Company, is unconstitutional and void in that as held by the said court it imposes a tax upon the shares of stock issued by the petitioner and other domestic trust companies as shares and upon the interest of the shareholders, both residents and non-residents of the state of Pennsylvania, in such shares, and thereby imposes a tax upon the property of such shareholders of the petitioner who were non-residents of the state and upon their prop- [fol. 331] erty which was situate outside the state in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the petitioner and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

14. The Supreme Court of the state of Pennsylvania erred in that the judgment which it entered against the Schuylkill Trust Company was determined in amount by a method of settlement which differs from the method of settlement which was applied to other trust companies for the same and other tax years under authority of the Act of April 25, 1929, Pamphlet Laws 673, and in the cases of the Provident Trust Company, 40 Dauphin Co. Repts. 146; 41 Dauphin Co. Repts. 1; 319 Pa. 385; and the Girard Trust Company, 42 Dauphin Co. Repts. 297, affirmed by the Supreme Court of Pennsylvania, — Pa. —; thereby discriminating against the petitioner and its shareholders in violation of Section 1 of Article IX of the Constitution of

Pennsylvania and Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving the petitioner and its shareholders of their property without due process of law and denying to them the equal protection of the laws.

15. The Supreme Court of the state of Pennsylvania erred in that the final judgment which it entered against the Schuylkill Trust Company violates the opinion, judgment and mandate of the Supreme Court of the United States entered in the instant case: Schuylkill Trust Company, Appellant, vs. The Commonwealth of Pennsylvania, Supreme Court of the United States, No. 3, October Term, 1935, November 11, 1935, 296 U. S. 113, wherein and whereby the Act of Assembly of the state of Pennsylvania approved April 25, 1929, Pamphlet Laws 673, was held unconstitutional and void.

[fol. 332] 16. The Supreme Court of the state of Pennsylvania erred in that its final judgment affirming the final judgment of the Court of Common Pleas of Dauphin County directing the entry of judgment in favor of the Commonwealth of Pennsylvania and against the petitioner, the Schuylkill Trust Company, was based upon an alleged state of facts not in evidence and differing from the facts upon which the settlement of tax was made by the state taxing officers, differing from the facts upon which the appeal from such settlement was taken to the Dauphin County Court and differing from the facts upon which the original judgments of the said court, the state Supreme Court and the Supreme Court of the United States were based thereby violating Section 1104 of the state statute of April 9, 1929, Pamphlet Laws 343 (The Fiscal Code), Section 1 of Article IX of the Constitution of the state of Pennsylvania and thereby depriving the petitioner and its shareholders of their property without due process of law and denying to them the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

[fol. 333] PRAYER FOR REVERSAL

For which errors the petitioner and appellant, Schuylkill Trust Company, prays that the said judgment of the

Supreme Court of the State of Pennsylvania dated June 25, 1937, in the above entitled cause, be reversed and a judgment rendered in favor of the said appellant and for costs.

Schuylkill Trust Company, Norman S. Farquhar, President. (Corporate Seal.)

John Robert Jones, Counsel for the Appellant.

August 16, 1937.

[fol. 334] *Duly sworn to by Norman S. Farquhar. Jurat omitted in printing.*

[fols. 335-340] Opinion of the court omitted. Printed side page 266, ante.

[fols. 341-382] [File endorsement omitted.]

ORDER ALLOWING APPEAL

And Now, August 20th 1937, upon consideration of the within petition, an appeal is allowed in the within cause; bond to be filed for costs in the sum of $200.

Owen J. Roberts, Associate Justice of the Supreme Court of the United States.

[fol. 383] Citation, in usual form, showing service on Manuel Kraus, filed August 31, 1937, omitted in printing.

[fol. 384] IN SUPREME COURT OF PENNSYLVANIA

[Title omitted]

STIPULATION AND PRAECIPE FOR TRANSCRIPT OF RECORD—Filed August 31, 1937

To the Prothonotary of the Supreme Court of Pennsylvania, Middle District:

Now, this 31 day of August, 1937, the appellant and the appellee, by their respective counsel, stipulate that the transcript of the record in the above entitled cause shall consist of the following portions of the record, and request

you to prepare said transcript and include therein the following:

1. Docket Entries in the Supreme Court of Pennsylvania.

2. Record in the Supreme Court of Pennsylvania consisting of Record of Court of Common Pleas of Dauphin County:

Docket Entries.
Appeal and Specification of Objections.
Stipulation of Facts.
Supplemental Stipulation of Facts.
Statement of Counsel.
Defendant's Requests for Conclusions of Law and Answers of the Court.
Opinion (Court of Common Pleas of Dauphin County).
Exceptions of the Schuylkill Trust Company, Defendant.
Opinion Overruling Exceptions.
[fol. 385] Supplemental Order and Final Judgment.
Opinion (Supreme Court of Pennsylvania).
Opinion (Supreme Court of the United States).
Mandate of the Supreme Court of the United States.
Remittitur.
Petition for Rule to Show Cause.
Demurrer.
Judgment.
Opinion.
Opinion (Girard Trust Company).
Exceptions of the Schuylkill Trust Company, defendant.
Exceptions of the Commonwealth.
Exceptions Overruled and Final Judgment.
Additional Exceptions of the Schuylkill Trust Company, Defendant.
Opinion Upon Exceptions.
Modified and Final Judgment.

3. Statement of Questions Involved as contained in the Brief filed in the Supreme Court of Pennsylvania by the Schuylkill Trust Company, Appellant.

4. Statement of Questions Involved as contained in the Brief filed in the Supreme Court of Pennsylvania by the Commonwealth of Pennsylvania, Appellee.

5. Assignments of Error filed in the Supreme Court of Pennsylvania by the Schuylkill Trust Company, Appellant.

6. Opinion of the Supreme Court of Pennsylvania.

7. Petition for the allowance of an appeal to the Supreme Court of the United States and order made thereon allowing the appeal.

8. The accompanying Statement as to Jurisdiction.

9. The accompanying Assignments of Error.

[fol. 386] 10. Citation on appeal.

11. Stiplation and Praecipe for Transcript of Record.

John Robert Jones, Counsel for the Appellant. Chas. J. Margiotti, Attorney General, Commonwealth of Penna., by Manuel Kraus, Deputy Atty. General, Counsel for the Appellee.

[fol. 387] [File endorsement omitted.]

[fol. 388] Chief Justice's Certificate to Prothonotary omitted in printing.

[fol. 389] Prothonotary's Certificate to Chief Justice omitted in printing.

[fol. 390] Prothonotary's certificate to foregoing transcript omitted in printing.

[fol. 391] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY AND THE PARTS OF THE RECORD THOUGHT NECESSARY FOR THE CONSIDERATION THEREOF—Filed September 27, 1937

To the Hon. Charles Elmore Cropley, Clerk of the Supreme Court of the United States:

Sir:

In compliance with paragraph 9 of Rule 13 of Revised Rules of the Supreme Court of the United States the appel-

lant submits the following statement of points on which the appellant intends to rely and the parts of the record which the appellant thinks necessary for the consideration thereof, together with proof of service of the same on the appellee:

I. The points on which the appellant intends intends to rely are stated in the Assignments of Error filed by the appellant with its Petition for Appeal.

II. The portions of the record thought necessary for the consideration of the above points are the portions set forth in the Stipulation and Praecipe for Transcript of Record certified on appeal to the Supreme Court of the United States.

John Robert Jones, Counsel for the Appellant.

[fols. 392-393] And Now, this 23rd day of September, 1937, service of the foregoing Statement is accepted and the receipt of a copy thereof is acknowledged for the Commonwealth of Pennsylvania, appellee.

Charles J. Margiotti, Atty General; Manuel Kraus, Deputy Attorney General, Counsel for the Commonwealth of Pennsylvania, Appellee.

[fol. 394] Served the above upon the Commonwealth of Pennsylvania, appellee, by mailing a copy thereof to Manuel Kraus, Esq., Deputy Attorney General, Department of Justice, State Capitol, Harrisburg, Pennsylvania, by first class mail September 18, 1937.

John Robert Jones, Attorney for the Appellant.

[fol. 395] [File endorsement omitted.]

Endorsed on cover: File No. 41,928. Pennsylvania Supreme Court. Term No. 447. Schuylkill Trust Company, Appellant, vs. The Commonwealth of Pennsylvania. Filed September 23, 1937. Term No. 447, O. T., 1937.